

12-16-81
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Pages 61245-61440

Federal Register

Wednesday
December 16, 1981

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- 61245 **Wright Brothers Day** Presidential proclamation
- 61249 **Banking** FRS amends regulations on extension of credit to adjust discount rates.
- 61390 **Coal** Interior/BLM proposes to amend coal management program regulations. (Part II of this issue)
- 61424 **Interior/GS** proposes regulations on Federal coal exploration and mining operations. (Part III of this issue)
- 61291 **Loan and Grant Programs—Housing** USDA/FHA revises regulations on home repair loans and grants for very low-income rural homeowners.
- 61272 **Hazardous Wastes** EPA temporarily excludes solid wastes generated at certain facilities from list of hazardous wastes.
- 61287 **Health Services** HHS/PHS changes policy on withholding of reimbursement for capital expenditure when timely application has not been made.
- 61334 **Grant Programs—Child Welfare** HHS/Child Support Enforcement Office cancels funding for FY '82 project, "Survey of Non-AFDC Cases Which Receive Child Support Enforcement Services."

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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- 61299 Flood Assistance** FEMA proposes to revise procedures on administrative hearings to resolve appeals of base flood elevation determinations.
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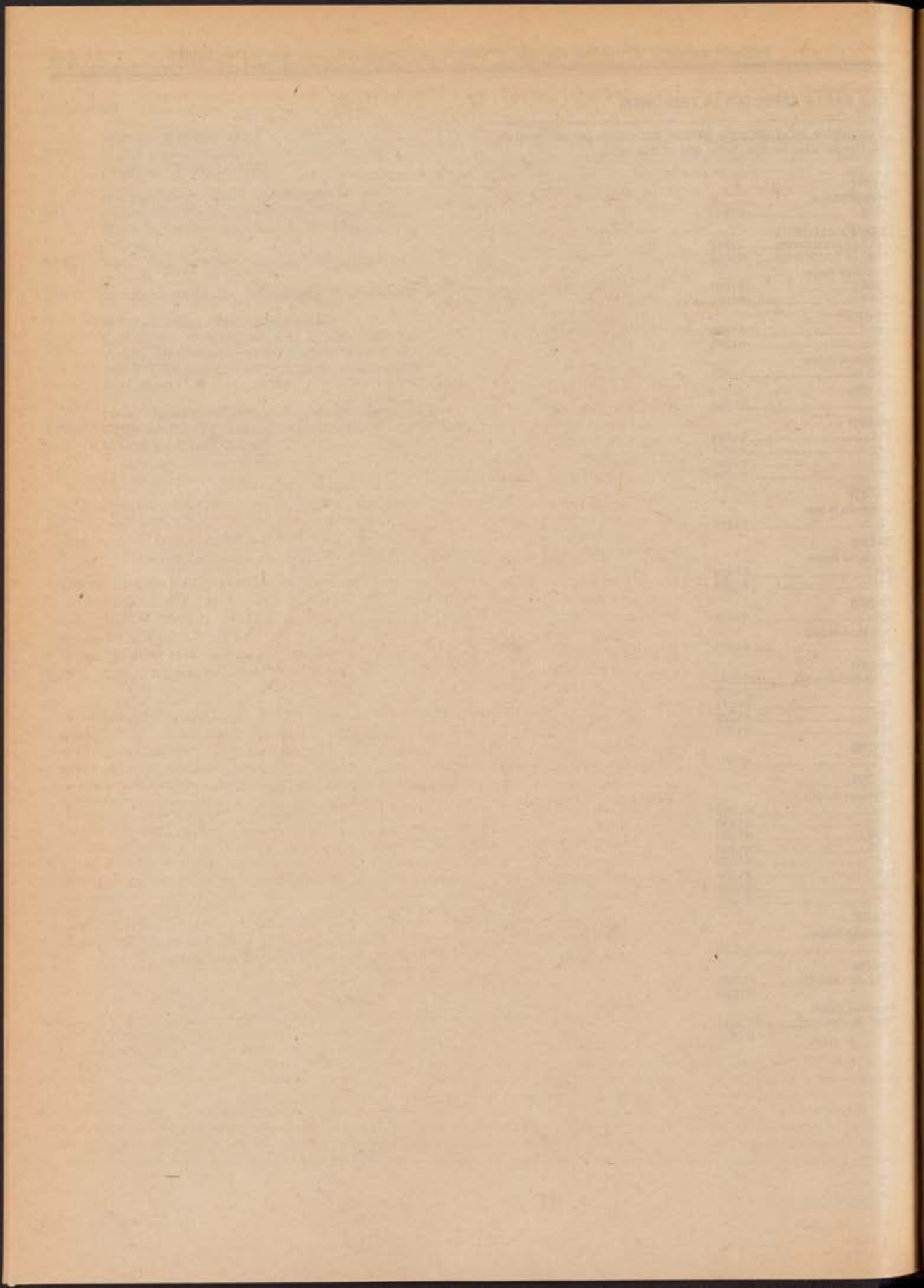
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Proclamation 4886 of December 14, 1981

The President

Wright Brothers Day, 1981

By the President of the United States of America

A Proclamation

Since the dawn of civilization, men have dreamed of conquering the air. History is filled with tales of those who tried to emulate the flight of birds, but not until the early days of this century did that dream become a reality.

On December 17, 1903, near Kitty Hawk, North Carolina, the age of aviation began when Orville and Wilbur Wright launched man's first successful flight in a mechanically propelled aircraft. Orville Wright remained aloft in a flying machine for just 12 seconds, covering a distance of only 120 feet, but the inventiveness and daring of these two brothers changed our lives for all time.

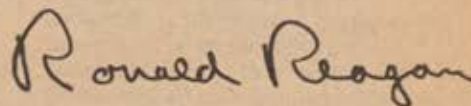
Today, aviation is vital to the American way of life and to our economy and national defense. The air transportation network enables us to travel for business or pleasure with unequalled speed and convenience while providing for the rapid and efficient transfer of our nation's commercial goods.

The pioneering spirit exhibited by the Wright brothers and fostered by our system of free enterprise has kept America in the forefront of innovative aeronautics—a spirit dramatically demonstrated again this year with the two successful missions of the United States Space Shuttle COLUMBIA. As it glided to perfect landings in the California desert, COLUMBIA gave us pause to reflect on another triumph in American aviation and on the creative genius of the American people.

To commemorate the historic achievements of the Wright brothers, the Congress, by a joint resolution of December 17, 1963 (77 Stat. 402, 36 U.S.C. 169), designated the seventeenth day of December of each year as Wright Brothers Day and requested the President to issue a proclamation annually inviting Americans to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby call upon the people of this nation and their local and national governmental officials to observe Wright Brothers Day, December 17, 1981, with appropriate ceremonies and activities, both to recall the accomplishments of the Wright brothers and to provide stimulus to aviation in this country and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of Dec., in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.



Washington, D.C., December 14, 1954

Mr. J. Edgar Hoover

Director, Federal Bureau of Investigation

A. J. Rosenberg

Dear Mr. Hoover: I am writing you this letter in response to your letter of December 10, 1954, regarding the matter of the Rosenberg case. I am sorry that I cannot give you a more definitive answer at this time, but I am sure that you will understand the need for further investigation in this matter. I am sure that you will find the information I am providing to be of interest and value to your office.

The information I am providing to you is of a confidential nature and is being provided to you for your information only. It is not to be used in any public or official capacity without my prior approval. I am sure that you will find the information I am providing to be of interest and value to your office.

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Rules and Regulations

Federal Register

Vol. 46, No. 241

Wednesday, December 16, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

1980-Crop Farm-Stored Peanut Loan and Purchase Program

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This rule deletes the regulations codified at 7 CFR 1421.295 through 1421.298 (1980-Crop Farm-Stored Peanut Loan and Purchase Program). Adjustments in farm-stored loan and purchase rates for differences in type, quality, location, and other factors and loan availability, purchase and maturity dates are published each year in the Federal Register and are also later codified in the Code of Federal Regulations. In order to avoid having to amend the Code of Federal Regulations each time a change is made in the loan and purchase rates, the annual crop year data will no longer be codified in the Code of Federal Regulations beginning with 1981-crop peanuts but will be published in the Federal Register in the notice section.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce D. Starnes, (202) 447-7301.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum 1521-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects

on competition, employment, investment, productivity, innovation 1980 Crop Farm-Stored Peanut Loan and Purchase Program or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

This rule will not have a major impact specifically on area and community development. Therefore, review as established by the Office of Management and Budget Circular A-95 was not used to assure that units of local government are informed of this rule.

Previously, provisions setting forth the availability, maturity of loans, and loan and purchase rates were published annually in the Federal Register as final rules. The same data was later codified in the Code of Federal Regulations. However, since these provisions are only applicable to a single crop year, they are virtually obsolete by the time they are actually codified in the Code of Federal Regulations. Accordingly, effective with the 1981 crop of peanuts, loan and purchase rates and location adjustments for farm-stored peanuts will be published as a notice in the Federal Register. Also, certain provisions relating to loan availability and loan maturity dates will be codified in a separate document in the general provisions governing the Peanut Farm-Stored Loan and Purchase Program.

Since this rule makes no substantive change but merely deletes certain obsolete provisions from the Code of Federal Regulations, it has been determined that no further public rulemaking is required. The provisions previously appearing at 7 CFR 1421.295-1421.298 shall remain in effect with respect to those crop years to which they are applicable.

Final rule

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

§§ 1421.295-1421.298 [Removed]

Accordingly, the regulations at 7 CFR 1421.295 to 1421.298 are hereby removed from the Code of Federal Regulations.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 108, 401, 403, and 405, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1445, 1421))

Signed at Washington, D.C. on December 12, 1981.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-35854 Filed 12-15-81; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1421

Tung Oil Warehouse-Stored Loan Program; Removal of Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes the regulations codified at 7 CFR 1421.430-1421.435 (1970 and Subsequent Crops Tung Oil Warehouse-Stored Loan Program). The Tung Oil Warehouse-Stored Loan Program has not been an active program since the 1976 crop of tung nuts and, therefore, it has been determined that the regulations governing the program should be deleted from the Code of Federal Regulations.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT:

Thomas W. Fink, (202) 382-9879.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Secretary's Memorandum 1512-1 and Executive Order 12291 and has been classified as "not major." This final rule has been classified as "not major" since it will not result in (1) an annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will not have a major impact specifically on area and community development. Therefore, review as established by Office of Management and Budget Circular A-95 was not used to assure that units of local government are informed of this rule.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The Tung Oil Warehouse-Stored Loan Program, as provided for in 7 CFR 1421.430 through 1421.435, has been inoperative for more than five years and continuation of the program regulations is unnecessary. Since this action makes no substantive change but merely deletes obsolete regulations, it has been determined that no further public rulemaking is required.

Final Rule

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1970 and Subsequent Crops Tung Oil Warehouse-Stored Loan Program [Removed]

§§ 1421.430 through 1421.435 [Removed]

Accordingly, the *Subpart—1970 and Subsequent Crops Tung Oil Warehouse-Stored Loan Program* and the regulations appearing at 7 CFR 1421.430 through 1421.435 (1970 and Subsequent Crops Tung Oil Warehouse-Stored Loan Program) are hereby removed from the Code of Federal Regulations.

(Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b, 714c); secs. 201, 401, 63 Stat. 1051, as amended (7 U.S.C. 1446, 1421))

Signed at Washington, D.C. on December 9, 1981.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc 81-35953 Filed 12-15-81; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1443

Castor Oil Purchase Program; Removal of Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes the regulations codified at 7 CFR 1443.100-1443.110 (Castor Oil Purchase Program Regulations). The Castor Oil Purchase Program has not been an active program since the 1968 crop of castor beans and, therefore, it has been determined that the regulations governing the program should be deleted from the Code of Federal Regulations.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas W. Fink, (202) 382-9879.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Secretary's Memorandum 1512-1 and Executive Order 12291 and has been classified as "not major" since it will not result in (1) an annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will not have a major impact specifically on area and community development. Therefore, review as established by Office of Management and Budget Circular A-95 was not used to assure that units of local government are informed of this rule.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since Commodity Credit Corporation (CCC) is not required by U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The Castor Oil Purchase Program, as provided for in 7 CFR 1443.100 through 1443.110, has been inoperative since the 1971 crop year and continuation of the program regulations is unnecessary. Since this final rule makes no substantive change but merely deletes obsolete regulations, it has been determined that no further public rulemaking is required.

Final Rule

PART 1443—OILSEEDS

Subpart—Castor Oil Purchase Program Regulation (1968) [Removed]

§§ 1443.100 through 1443.110 [Removed]

Accordingly, the *Subpart—Castor Oil Purchase Program Regulation (1968)* and the regulations appearing at 7 CFR 1443.100 through 1443.110 (Castor Oil Purchase Program Regulations) are hereby removed from the Code of Federal Regulations.

(Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b, 714c); secs. 301, 401, 63 Stat. 1051, as amended (7 U.S.C. 1447, 1421))

Signed at Washington, D.C. on December 9, 1981.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-35954 Filed 12-15-81; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1443

Cottonseed Oil and Meal Purchase Program Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes the regulations codified at 7 CFR 1443.58-1443.71 (Cottonseed Oil and Meal Purchase Program Regulations). The Cottonseed Oil and Meal Purchase Program has not been an active program since the 1970 crop year and, therefore, it has been determined that the regulations governing the program should be deleted from the Code of Federal Regulations.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas W. Fink, (202) 382-9879.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Secretary's Memorandum 1512-1 and Executive Order 12291 and has been classified as "not major." This final rule has been classified as "not major" since it will not result in (1) an annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will not have a major impact specifically on area and community development. Therefore, review as established by Office of Management and Budget Circular A-95 was not used to assure that units of local government are informed of this rule.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The Cottonseed Oil and Meal Purchase Program, as provided for in 7 CFR 1443.58 through 1443.71, has been inoperative since the 1970 crop year and continuation of the program regulations is unnecessary. Since this final rule makes no substantive change but merely deletes obsolete regulations, it has been determined that no further public rulemaking is required.

Final Rule**PART 1443—OILSEEDS****Subpart—Cottonseed Oil and Meal Purchase Program Regulations (1970) [Removed]**

§§ 1443.58 through 1443.71 [Removed]

Accordingly, the Subpart-Cottonseed Oil and Meal Purchase Program Regulations (1970) and the regulations appearing at 7 CFR 1443.58 through 1443.71 (Cottonseed Oil and Meal Purchase Program Regulations) are hereby removed from the Code of Federal Regulations.

(Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b, 714c); secs. 301, 401, 63 Stat. 1051, as amended (7 U.S.C. 1447, 1421))

Signed at Washington, D.C. on December 9, 1981.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc 81-35853 Filed 12-15-81; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM**12 CFR Part 201****Extensions of Credit by Federal Reserve Banks; Changes in Discount Rates**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country. The action was taken to bring the discount rate into better alignment with short-term rates that have been prevailing recently in the market.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: James McAfee, Assistant Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3259).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations required that these amendments must be adopted immediately.

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357, Part 201) is amended as set forth below:

1. Section 201.51 is revised to read as follows:

§ 201.51 Short term adjustment credit for depository institutions.

The rates for short term adjustments credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	12	Dec. 4, 1981.
New York	12	Dec. 4, 1981.
Philadelphia	12	Dec. 4, 1981.
Cleveland	12	Dec. 4, 1981.
Richmond	12	Dec. 4, 1981.
Atlanta	12	Dec. 4, 1981.
Chicago	12	Dec. 4, 1981.
St. Louis	12	Dec. 4, 1981.
Minneapolis	12	Dec. 4, 1981.
Kansas City	12	Dec. 4, 1981.
Dallas	12	Dec. 4, 1981.
San Francisco	12	Dec. 4, 1981.

2. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit to depository institutions.

(a) The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	12	Dec. 4, 1981.
New York	12	Dec. 4, 1981.
Philadelphia	12	Dec. 4, 1981.
Cleveland	12	Dec. 4, 1981.
Richmond	12	Dec. 4, 1981.
Atlanta	12	Dec. 4, 1981.
Chicago	12	Dec. 4, 1981.
St. Louis	12	Dec. 4, 1981.
Minneapolis	12	Dec. 4, 1981.
Kansas City	12	Dec. 4, 1981.
Dallas	12	Dec. 4, 1981.
San Francisco	12	Dec. 4, 1981.

(b) The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	12	Dec. 4, 1981.
New York	12	Dec. 4, 1981.
Philadelphia	12	Dec. 4, 1981.
Cleveland	12	Dec. 4, 1981.
Richmond	12	Dec. 4, 1981.
Atlanta	12	Dec. 4, 1981.
Chicago	12	Dec. 4, 1981.
St. Louis	12	Dec. 4, 1981.
Minneapolis	12	Dec. 4, 1981.
Kansas City	12	Dec. 4, 1981.
Dallas	12	Dec. 4, 1981.
San Francisco	12	Dec. 4, 1981.

Note.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge

applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter.

(12 U.S.C. 248(i), interprets or applies 12 U.S.C. 357)

By order of the Board of Governors,
December 9, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35884 Filed 12-15-81; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD**12 CFR Part 563f**

[No. 81-743]

Management Official Interlocks

December 4, 1981.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board has amended its regulations governing management official interlocks between depository organizations to clarify the manner in which it has interpreted the provisions requiring termination of grandfathered interlocks due to acquisitions, mergers or consolidations. These amendments will eliminate confusion that resulted from the previous wording of those provisions.

EFFECTIVE DATE: December 10, 1981.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers (202) 377-6961 or Kenneth F. Hall (202) 377-6466, Federal Home Bank Board; Bronwen Mason (202) 452-3564 or Melanie Fein (202) 452-3594, Board of Governors of the Federal Reserve System; Howard Finkelstein, Jerome Edelstein, or Frank Bonaventure (202) 447-1880, Office of the Comptroller of the Currency; Pamela E. F. LeCren (202) 389-4433 or Barbara I. Gersten (202) 389-4422, Federal Deposit Insurance Corporation; Ross Kendall (202) 357-1030, National Credit Union Administration.

SUPPLEMENTARY INFORMATION: The Depository Institution Management Interlocks Act ("Interlocks Act") was enacted as Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. 95-630, 12 U.S.C. 3201 *et seq.*). The general purpose of the Interlocks Act, and the regulations issued thereunder, is to foster competition among depository institutions, depository holding companies, and their affiliates. Regulations implementing the Act were published on July 19, 1979 (44 FR 42152 (1979)), and were subsequently amended

effective May 9, 1980 (45 FR 24384 (1980)).

Under the Interlocks Act, certain interlocks between depository organizations that existed on November 10, 1978, are "grandfathered," thus permitting interlocks that would otherwise be prohibited to continue until November 10, 1988. The occurrence of specified changes in circumstances, however, will terminate such grandfather privileges. The regulations implementing the Act define such changes to include certain mergers, acquisitions, and consolidations. The regulations provide that a grandfathered interlock will become prohibited if one of the depository organizations involved in an interlocking relationship acquires or is acquired by, is merged into or with, or is consolidated with another depository organization for which prior to the transaction the person could not have served as a management official under the general prohibitions of the regulations.

The attached amendments make two changes to the provision defining certain mergers, acquisitions, and consolidations to be changes in circumstances. First, as previously written, subparagraph (a)(1)(i) of the changes-in-circumstances provision could have been read to require the termination of grandfathered interlocks in circumstances not originally intended by the agencies. For example, the previous provision could have been interpreted to require termination of a grandfathered interlock between a savings and loan association with assets over \$1 billion located solely in State X and a bank holding company with assets over \$500 million whose office and subsidiaries were located solely in State Y when the bank holding company acquired an additional bank subsidiary with assets of less than \$500 million located in the same community as one of the bank holding company's subsidiary banks.

As revised, the regulation requires termination of the grandfathered interlock only if the newly acquired bank subsidiary is a bank for which the management official in question could not have served prior to the transaction due to the fact that he or she was serving as a management official of the savings and loan in State X. That is, the official's service with the bank holding company is *not* considered in determining whether the newly acquired bank subsidiary was an institution for which the official could have served prior to the acquisition. Thus, in this example, the acquisition will be a change in circumstances requiring

termination of the grandfathered interlock only if the newly acquired bank has assets of \$500 million or more or if the savings and loan association in State X has a depository institution affiliate that is located in the same community or SMSA as the newly acquired bank.

The second amendment to the changes-in-circumstances provision involving mergers, acquisitions, and consolidations deletes the reference to the general prohibitions paragraph of the regulation and substitutes a reference to the entire regulation. It is the intent of the Board by doing so to make clear that the changes-in-circumstances provision is to be read in conjunction with the exceptions to the regulations and the grandfather provision. For example, assume that Bank A, Savings and Loan Association B, and Bank C all are located in the same SMSA and each has assets exceeding \$20 million. X's interlocking service with Bank A and Savings and Loan Association B is grandfathered. Bank C faces conditions endangering its safety or soundness and subsequently merges with Bank A. X's interlock need not be terminated due to the merger if the primary Federal supervisory agency of Bank C determines that conditions warranting the granting of a safety or soundness exception under the regulation existed prior to the merger.

The Board also takes this opportunity to clarify in the changes-in-circumstances provision that grandfathered interlocks do become prohibited by the occurrence of changes in circumstances and must be terminated.

These amendments are promulgated in conjunction with identical amendments being undertaken by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. The Board finds that notice and public procedure with respect to the amendments pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 are unnecessary because the amendments merely clarify the manner in which the Board interprets the provisions governing changes in circumstances. The Board also finds that the 30-day delay of the effective date following publication as prescribed in 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary for the same reason.

Accordingly, the Board hereby amends Part 563f, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563F—MANAGEMENT OFFICIAL INTERLOCKS

1. Revise paragraph (a)(1), introductory text and paragraph (a)(1)(i) of § 563f.6, to read as follows:

§ 563f.6 Changes in circumstances.

(a)(1) *Grandfathered interlocks.* If a person's service as a management official is grandfathered under § 563f.5 of this part, such service will cease to be grandfathered and the person must terminate such service if any of the following changes in circumstances occurs:

(i) *Acquisitions, mergers, and consolidations.* One of the depository organizations involved in the interlocking relationship acquires or is acquired by, is merged into or with, or is consolidated with another depository organization for which, immediately prior to the transaction, the person could not have served as a management official under this Part due to the person's service with a depository organization not a party to the transaction.

(Pub. L. No. 95-630 (12 U.S.C. 3201 *et seq.*); Reorg. Plan No. 3 of 1947; 3 CFR, 1943-1948 comp., p. 1071)

Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

(FR Doc. 81-35867 Filed 12-15-81; 8:45 am)

BILLING CODE 6720-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 16

Contract Markets; Reporting Requirements of Certain Data in Machine Readable Form

AGENCY: Commodity Futures Trading Commission.

ACTION: Implementation of regulations and delegation of authority.

SUMMARY: Effective December 3, 1981, Commission Rules 16.00, 16.01, 16.02 and 16.04 require contract markets to routinely provide the Commission with certain futures and options data on compatible data processing media, using a format and coding structure approved in writing by the Commission or its designee, 46 FR 54526 (November 3, 1981). Several contract markets have notified the Commission that they are in

the process of software development and will not be able to comply with the regulations concerning futures data by December 3, 1981.

The Commission is delegating to the Executive Director authority to make certain relevant determinations concerning format for submission of this data, and is giving notice that representatives from the Office of the Executive Director will in the near future contact each contract market to notify it of the format and coding structure which will be required and to determine an appropriate date by which a contract market can begin submitting the data in the prescribed manner.

The foregoing action is intended to allow the Commission and contract markets sufficient time to jointly develop format and coding structure so that the required data may be efficiently processed by the Commission.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT:

Curtis S. Lackey, Director of ADP Services, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: On November 3, 1981, the Commission published in the *Federal Register* final rules which require contract markets to provide certain information concerning options and futures trading in machine readable form. 46 FR 54526. The rules specify that such information must be provided in a format and coding structure approved in writing by the Commission or its designee.¹ Further, the rules require that unless otherwise instructed by the Commission or its designee, contract markets shall submit the data by the business day following that to which the information pertains at the Regional Office of the Commission having local jurisdiction with respect to such market.² The effective date of these rules is December 3, 1981. 46 FR 54500.

Initial contacts with contract markets indicate that computer software necessary to comply with Part 16 is being developed jointly for options and futures. Two exchanges have notified the Commission in writing that they are

still in the process of software development and will not be ready to comply with the regulations concerning futures data by December 3, 1981.

The Commission is mindful of the time required to develop new computer systems and the advantages inherent in developing software jointly for futures and options. Moreover, the Commission recognizes that additional time may be necessary in order to contact each exchange to inform it of the format and coding structures in which it must provide information both for the hard copy and machine readable form. In view of this, the Commission will be determining, on a case by case basis, dates on which each exchange will be required to submit data in machine readable form.⁴ Until such time, it will require each exchange to continue to submit data in the form in which it is currently being provided.

At this time, the Commission also is delegating to the Executive Director or her designee the authority contained in Rules 16.00(b), 16.01(d), 16.02(b), and 16.04 (b) to approve the specific format and coding structure to be used by the exchanges and to determine the appropriate time to commence filing reports required by Rules 16.00, 16.01, 16.02 and 16.04. Commission staff are to insure that all formats and coding structures used by contract markets are compatible with systems employed by the Commission. The Commission, however, reserves its authority contained in the above rules to determine if exchanges can submit data by means other than data processing media.

Issued in Washington, D.C. on December 8, 1981.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 81-35482 Filed 12-15-81; 8:45 am]

BILLING CODE 6351-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 214, 218, 232, and 237

Annuity Beginning and Ending Dates

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board amends several parts of its regulations to create a new Part 218, Annuity Beginning and Ending Dates, under the Railroad Retirement Act.

⁴ In the November 3, 1981, FR the Commission noted that it would consider each exchange on a case by case basis in applying the requirement that data be provided in machine readable form. 46 FR 54514.

Amendment of the regulations is a part of an ongoing project of the Railroad Retirement Board to review, revise and reorganize its regulations.

EFFECTIVE DATE: December 16, 1981.

ADDRESS: Secretary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marilyn Berg or Eloise Sandle, Bureau of Retirement Claims, Railroad Retirement Board, Room 943, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4818 (FTS 387-4818).

SUPPLEMENTARY INFORMATION: The Board has determined that this is not a major rule and has been handled in conformance with E.O. 12291.

Proposed rulemaking was published on pages 43998-44000 of the *Federal Register* of September 2, 1981, and invited comments for 30 days ending October 2, 1981. No comments were received. The following substantially restates the Supplementary Information contained in the September 2, 1981 document.

Effective January 1, 1975, the Railroad Retirement Act of 1974 replaced the Railroad Retirement Act of 1937. Many of the Board's regulations, including the parts amended by this document, were promulgated under the Railroad Retirement Act of 1937 and are in need of revision to update them to the Railroad Retirement Act of 1974. In connection with this change in law and the emphasis placed on the revision of regulations to make them more readily understandable, the Board undertook a project to review and revise all of its regulations. The magnitude of such a massive revision has proved to be greater than was anticipated at the outset of the project. These amended regulations are among the first portions of the revised regulations to be developed.

New Part 218 consolidates portions of Parts 214, 232, and 237 of the current regulations which concern the beginning and ending dates of annuities. For the most part the Railroad Retirement Act of 1974 did not make substantive changes in the beginning and ending dates of annuities or in the factors that might affect the beginning or ending date of an annuity. However, the Railroad Retirement Act of 1974, unlike the Railroad Retirement Act of 1937, does provide for the addition of a windfall benefit component to certain annuities, and the proposed Part 218 sets out in Subpart E the provisions for the beginning and ending of windfall benefits. Subpart E is being revised in accord with the recently enacted

¹ Rule 16.00 requires that contract markets provide information concerning option and futures positions and transactions of clearing members. Rule 16.01 requires that contract markets submit data concerning futures prices and options volume, open interest and premiums. Rules 16.02 and 16.04 require contract markets to submit data concerning open contracts held by option traders.

² See Rules 16.00(b), 16.01(d), 16.02(b) and 16.04(b), 46 FR 54526 (November 3, 1981).

³ However, monthend reports required under Rule 16.04 are to be submitted not later than the fifth business day following that to which the information pertains.

Omnibus Budget Reconciliation Act and is not currently being published. The Railroad Retirement Act of 1974 provides that a disability benefit ceases at age 65 with the individual becoming eligible for a retirement annuity. Under the 1937 Act, entitlement to a disability annuity would continue after age 65. This change is reflected in section 218.26.

Under the Railroad Retirement Act of 1974 an employee, spouse or survivor annuity may begin on the first day of the month all eligibility requirements are met. Under the 1937 Act such annuities did not begin until the actual date the eligibility requirement was met. This change is reflected in section 218.5.

New Part 218 reflects, more closely, the language of the Railroad Retirement Act of 1974, and reorganizes the regulations in a manner which makes them much easier to understand and to use. Sections 218.28 through 218.30 and 218.35 through 218.40 have been reserved because of recent legislative changes but will be dealt with in a subsequent rulemaking. Finally, new Part 218 has been written in plain English to make it more understandable.

Title 20, Chapter II, is amended as follows:

PART 214—ANNUITY BEGINNING DATE [REMOVED]

1. Part 214 is removed. Regulations on annuity beginning dates are incorporated into a new Part 218.

2. Part 218 is added to read as follows:

PART 218—ANNUITY BEGINNING AND ENDING DATES

Subpart A—General

Sec.

- 218.1 Introduction.
- 218.2 Definitions.

Subpart B—When an Annuity Begins

- 218.5 General rules.
- 218.6 When a supplemental annuity begins.
- 218.7 How to choose an annuity beginning date.
- 218.8 When chosen annuity beginning date is more than three months after filing date.
- 218.9 When an applicant can change the annuity beginning date.

Subpart C—How Work and Special Payments Affect an Employee or Spouse Annuity Beginning Date

- 218.15 Introduction.
- 218.16 Work started after annuity beginning date.
- 218.17 Vacation pay.
- 218.18 Sick pay.
- 218.19 Pay for time lost.
- 218.20 Separation, displacement, or termination pay.

Subpart D—When Annuity Ends

Sec.

- 218.25 Employee age annuity.
- 218.26 Employee disability annuity.
- 218.27 Supplemental annuity.
- 218.28 Spouse annuity. [Reserved]
- 218.29 Surviving spouse annuity. [Reserved]
- 218.30 Child's annuity. [Reserved]
- 218.31 Parent's annuity.

Subpart E—When Windfall Benefit Begins and Ends

- 218.35 When an employee windfall benefit begins. [Reserved]
- 218.36 When an employee windfall benefit ends. [Reserved]
- 218.37 When a spouse windfall benefit begins. [Reserved]
- 218.38 When a spouse windfall benefit ends. [Reserved]
- 218.39 When a surviving spouse windfall benefit begins. [Reserved]
- 218.40 When a surviving spouse windfall benefit ends. [Reserved]

Authority: Sec. 5, Pub. L. 93-445, 88 Stat. 1332-1334 (45 U.S.C. 231d), sec. 7, Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f).

Subpart A—General

§ 218.1 Introduction.

This part tells when a person's entitlement to a monthly railroad retirement annuity begins and ends. The beginning and ending dates of the dual benefit windfall are also shown. Ordinarily, an annuity begins at the earliest date permitted under the Act. This part also tells when and how a person can select a later beginning date. Included is an explanation of how work and certain types of special payments affect the beginning date of an employee or spouse annuity.

§ 218.2 Definitions.

As used in this part—

"Applicant" means a person who signs an application for an annuity for himself, herself or for some other person.

"Application" means a form described in § 217.6 of this chapter.

"Award" means to process a form to make a payment. An annuity is awarded on the date the payment form is processed. This date is shown on an award letter.

"Claimant" means a person who files for an annuity for himself or herself or the person for whom an application is filed.

"Filing date" means the date on which an application or written statement is filed with the Board.

Subpart B—When An Annuity Begins

§ 218.5 General rules.

(a) An employee, spouse or survivor annuity begins on the first day of the month in which the claimant becomes eligible for that annuity, as explained in

Part 216 of this chapter, but not earlier than:

(1) The first day of the twelfth month before the month in which the application is filed;

(2) The date the applicant requests that the annuity begin;

(3) The day after the claimant for an employee or spouse annuity stops working for a railroad employer or his or her last non-railroad employer; or

(4) The date the employee annuity begins if the claimant is a spouse.

(b) An annuity may not begin on the thirty-first day of a month, unless the claimant would lose benefits if the annuity begins on the first of the following month. No annuity is payable for the thirty-first day of any month.

§ 218.6 When a supplemental annuity begins.

A supplemental annuity begins on the first day of the month in which the employee becomes entitled, as shown in Subpart C of Part 216 of this chapter, but not earlier than the date the employee annuity begins. If the employee is entitled to a disability annuity and is eligible for a supplemental annuity before he or she becomes age 65, as shown in § 218.12(e) of this chapter, the supplemental annuity cannot begin more than 12 months before the month in which the employee gives up the right to return to work.

§ 218.7 How to choose an annuity beginning date.

(a) *When application is filed.* The applicant may choose an annuity beginning date by:

- (1) Naming a specific date in an application accepted by the Board; or
- (2) Including with the application a signed statement which tells when the annuity should begin.

(b) *After application is filed.* After an application has been filed, the applicant may choose an annuity beginning date by preparing a signed statement which tells when the annuity should begin.

§ 218.8 When chosen annuity beginning date is more than three months after filing date.

If the applicant for any type of annuity wants the annuity to begin in a month which is more than three months after the date the application is filed, the Board will deny the application (see § 217.30 of this chapter). The applicant must file a new application no earlier than three months before the month he or she wants the annuity to begin.

§ 218.9 When an applicant can change the annuity beginning date.

(a) *Before annuity is awarded.* An applicant may change the annuity beginning date to a date that agrees with the rules in other sections of these regulations if:

(1) The applicant requests the change in a signed statement; and

(2) The statement is received on or before the date of the claimant's death.

(b) *After annuity is awarded.* If the annuity has been paid, a change in the annuity beginning date is usually allowed under the rules on reopening final decisions. However, an employee receiving an age or disability annuity with a beginning date before July 1, 1974 may not change the annuity beginning date to July 1, 1974 or later to make the employee eligible for an employee annuity, as described in § 216.5(a)(2) of this chapter, or the spouse eligible for a spouse annuity, as described in § 216.20(c)(1) of this chapter. An award can be reopened to change the annuity beginning date to a later date if:

(1) The annuitant requests the change in a signed statement;

(2) The statement is received on or before the date of the annuitant's death;

(3) The annuitant shows that it is to his or her advantage to have a later annuity beginning date; and

(4) All payments made for the period before the later annuity beginning date are recovered by cash refund or setoff.

Subpart C—How Work and Special Payments Affect An Employee or Spouse Annuity Beginning Date**§ 218.15 Introduction.**

The rules in this subpart apply only to an employee, spouse, and supplemental annuity. They do not apply to any type of survivor annuity.

§ 218.16 Work started after annuity beginning date.

(a) *General.* An annuity can begin only after an employee or spouse stops any work for a railroad or last non-railroad employer. However, if the employee or spouse starts work after an "intent to retire" is established, that work will have no effect on the annuity beginning date. An annuity cannot be paid for any month the employee or spouse returns to work for a railroad or for the last non-railroad employer for whom he or she worked before the "intent to retire" was established.

(b) *Intent to retire.*—(1) *Disability annuity.* An "intent to retire" is established to pay a disability annuity when:

(i) The applicant files for a disability annuity; or

(ii) The employee gives up all rights to return to work for a railroad and any last non-railroad employer before starting any new work.

(2) *Age annuity.* An "intent to retire" is established to pay an employee age or spouse annuity when—

(i) The employee or spouse gives up all rights to return to work for a railroad or last non-railroad employer before starting any new work; or

(ii) The employee or spouse does not continue working through the chosen annuity beginning date or begin any new work for at least 6 months after that date.

§ 218.17 Vacation pay.

(a) *From railroad employer.* Vacation pay may be credited to the vacation period due the employee or to the last day of actual work for the railroad employer. If the vacation pay is credited to the vacation period, the annuity can begin no earlier than the day after the vacation period ends.

(b) *From non-railroad employer.* Vacation pay will not usually affect the annuity beginning date. The annuity can begin as early as the day after the employee or spouse last works for a non-railroad employer. However, if an employee or spouse is carried on the payroll during a vacation period, the annuity can begin no earlier than the day after the vacation period ends.

§ 218.18 Sick pay.

(a) *From railroad employer.* If the employee is carried on the payroll, the annuity can begin no earlier than the day after the last day of sick pay. However, sick pay received under an approved wage continuation plan established through company policy or a labor agreement is not considered compensation and does not affect the annuity beginning date.

(b) *From non-railroad employer.* An employee or spouse who receives sick pay under a formal plan or system maintained by the employer is not considered to be working for that employer after the last day of actual work. The annuity can begin as early as the day after the employee or spouse last works for the employer. However, if the employer does not have a formal sick pay plan and carries the employee or spouse on the payroll, the annuity can begin no earlier than the day after the last day of sick pay.

§ 218.19 Pay for time lost.

Pay for time lost because of personal

injury must be credited to an actual period of time lost. The annuity can begin no earlier than the day after that period ends. If a period of time lost is reported that extends beyond the date on which the annuity can otherwise begin, the employee may request the employer to credit the payment to an earlier period.

§ 218.20 Separation, displacement, or termination pay.

When an employee receives separation, displacement, termination, or similar pay from a railroad employer, the annuity beginning date depends on whether the payments are a separation allowance or monthly compensation payments, as follows:

(a) *Separation allowance.* When an employee accepts a separation allowance, the employee gives up his or her job rights. A separation allowance may be credited by the employer and the Board to the last day of actual work or to the day the employee gives up job rights. The annuity can begin as early as the day after the day the separation allowance is credited.

(b) *Monthly compensation payments.* An employee who receives monthly compensation payments keeps his or her job rights while the payments are being made. The annuity cannot begin until after the end of the period for which payments are made.

Subpart D—When Annuity Ends**§ 218.25 Employee age annuity.**

An employee annuity based on age ends with the month before the month in which the employee dies.

§ 218.26 Employee disability annuity.

(a) *Ending date.* An employee annuity based on disability ends with the earliest of:

(1) The month before the month in which the employee dies;

(2) The month before the month in which the employee becomes age 65 (the disability annuity is changed to an age annuity); or

(3) The second month following the month in which the disability ends.

(b) *Effect of ended disability annuity on eligibility for a later annuity.* The ending of a disability annuity will not affect an employee's rights to receive any annuity to which he or she later becomes entitled. When a disability annuity ends before an employee becomes 65 years old, any additional

railroad service the employee has after the disability annuity ends can be credited as if no annuity had previously been paid.

§ 218.27 Supplemental annuity.

A supplemental annuity ends with the earlier of:

- (a) The month the employee age or disability annuity ends; or
- (b) The month before the month in which the employee returns to work for a railroad employer after the supplemental annuity closing date (see § 216.13, of this chapter).

§ 218.28 Spouse annuity. [Reserved]

§ 218.29 Surviving spouse annuity. [Reserved]

§ 218.30 Child's annuity. [Reserved]

§ 218.31 Parent's annuity.

A parent's annuity ends with the earliest of:

- (a) The month before the month the parent dies;
- (b) The month before the month the parent remarries after the employee's death; or
- (c) The month before the month the parent becomes entitled to a larger survivor annuity under Part 216 of this chapter, unless he or she elects to be paid the smaller annuity (see § 216.92 of this chapter).

Subpart E—When Windfall Benefit Begins and Ends

§ 218.35 When an employee windfall benefit begins. [Reserved]

§ 218.36 When an employee windfall benefit ends. [Reserved]

§ 218.37 When a spouse windfall benefit begins. [Reserved]

§ 218.38 When a spouse windfall benefit ends. [Reserved]

§ 218.39 When a surviving spouse windfall benefit begins. [Reserved]

§ 218.40 When a surviving spouse windfall benefit ends. [Reserved]

PART 232—SPOUSES' ANNUITIES

§ 232.205 [Removed]

§ 232.403 [Removed]

3. Part 232 is amended by correcting the spelling of the title, Spouse's to Spouses', and by removing § 232.205 of Subpart B and § 232.403 of Subpart D.

PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

§ 237.411 [Removed]

4. Part 237 is amended by removing § 237.411 of Subpart D.

Dated: November 25, 1981.

By authority of the Board.

James T. Brown,
Chief Executive Officer.

[FR Doc. 81-35840 Filed 12-15-81; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 288

[DoD Instruction 7230.7]

User Charges; Collection Alternatives

AGENCY: DOD.

ACTION: Amendment to final rule.

SUMMARY: This amendment will permit the use of accounts receivable collection procedures when multiple requests for services are received on a continuing basis from a reliable requester.

EFFECTIVE DATE: December 2, 1981.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas Mares, Office of the Deputy Assistant Secretary of Defense (Management System), OASD(C), The Pentagon, Washington, D.C. 20301, telephone 202-697-0536.

SUPPLEMENTARY INFORMATION: In FR Doc. 80-27629, appearing in the *Federal Register* on September 10, 1980 (45 FR 59566) the Office of the Secretary of Defense published this Part and is now revising § 288.6 to add collection alternatives.

PART 288—USER CHARGES

Accordingly, 32 CFR Part 288 is amended by revising § 288.6(a) to read as follows:

§ 288.6 Collections.

(a) Collections of charges and fees shall be made in advance of rendering the service, if practicable. The use of accounts receivable collection procedures may be practical when multiple requests for services are received on a continuing basis from a reliable requester.

* * * * *

(31 U.S.C. 483a)

M. S. Healy,

OSD Federal Register Liaison Officer,
Washington Headquarters Services,
Department of Defense.

December 11, 1981.

[FR Doc. 81-35886 Filed 12-15-81; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL-1969-3]

Approval of the Revision of the District of Columbia Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia on December 26, 1978. The air quality control regulations which were submitted in draft format in the December 26, 1978 submittal were officially adopted by the District of Columbia on February 26, 1981 and were submitted to EPA on June 23, 1981. The December 26, 1978 implementation plan revision was originally submitted to address those areas in the District of Columbia which were designated as not attaining the National Ambient Air Quality Standards for total suspended particulates (TSP), ozone, and carbon monoxide. On June 28, 1979, EPA published a proposed rule with respect to the District's submittal under Part D of Title I of the Clean Air Act (the Act). However, on April 1, 1980, the Mayor of the District of Columbia submitted a request, pursuant to Section 107(d)(5) of the Clean Air Act, proposing that the District of Columbia be redesignated as attaining the National Ambient Air Quality Standards for TSP. EPA proposed approval of the District's April 1, 1980 request supporting a redesignation of the primary National Ambient Air Quality (TSP) Standard on April 30, 1981 (46 FR 24214). On April 1, 1981, the District submitted documentation supporting their request for redesignation to attainment of the secondary TSP standard. EPA is taking action on the redesignation of both the primary and secondary TSP standards in a separate *Federal Register* notice published October 5, 1981 (46 FR 48927). This plan addresses attainment of the standards for TSP, ozone, and carbon monoxide and includes revisions which correct deficiencies cited in the June 26, 1979 notice of proposed rulemaking and which are necessary to meet the requirements of Part D of Title I of the Act.

EFFECTIVE DATE: Effective December 16, 1981.

ADDRESSES: Copies of the revision and accompanying support material are available for public inspection during

normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Media & Energy Branch (3AH10), Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan
District of Columbia Department of Environmental Services, Bureau of Air and Water Quality, 5010 Overlook Ave., SW., Washington, D.C. 20032, Attn: V. Ramadass

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NW.—Room 8401, Washington, D.C. 20408

For the Transportation Control portions of the plan:

Public Information Center, Metropolitan Washington Council of Governments, 1875 Eye Street, NW., Suite 200, Washington, D.C. 20006

FOR FURTHER INFORMATION CONTACT:

Joanne T. McKernan (3AH12), Air Media & Energy Branch, U.S. Environmental Protection Agency, Curtis Building, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106; telephone: (215) 597-8182, (Attn: AH300DC).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, (43 FR 8962), and on September 12, 1978 (43 FR 40502), the Administrator of the EPA, in accordance with the requirements of Section 107 of the Clean Air Act, designated the District of Columbia (D.C. or District) portion of the National Capital Interstate Air Quality Control Region (AQCR) as a nonattainment area for ozone and carbon monoxide. He also designated the central area of the District as not meeting the primary standard and the remainder of the District (except for a section in the Southeast) as not meeting the secondary standard for TSP.

The District of Columbia held public hearings on the nonattainment plan revision on May 23, 1978 and on October 27, 1978, respectively. The District's nonattainment plan revision was submitted to EPA on December 26, 1978 in response to the requirements of Part D of Title I of the Clean Air Act (the Act).

On June 26, 1979, EPA published a proposed rule, 44 FR 37236, describing the nature of the District's nonattainment plan submittal, identifying and discussing deficiencies with respect to requirements of Section 110 and Part D of Title I of the Clean Air

Act, and soliciting public comments on the draft SIP revision and on EPA's findings. At that time, EPA determined that the appropriate procedures in providing notice were followed and that public hearings were held in accordance with the requirements of 40 CFR Part 51, Subpart A, § 51.4.

Key actions required of the District were its adoption of the draft regulations and proposal of an amendment to its Motor Vehicle Inspection and Maintenance (I/M) legislation which would afford the District full legal authority to implement I/M as required under the Act.

The District undertook an effort to incorporate some of EPA's suggested changes and to review and refine the proposed draft regulations (originally contained in the December 26, 1978 nonattainment SIP) and on June 15, 1979, the District submitted a revised draft dated May 29, 1979. As previously stated, EPA proposed action on that SIP revision in the *Federal Register* on June 26, 1979, and requested public comments on the SIP revision, amendments to the D.C. regulations contained therein, and Act 2-280 (D.C. Law 2-133).

The District of Columbia has since adopted legislation giving the District full legal authority for the implementation of an I/M program and has adopted air quality control regulations which satisfy the deficiencies raised in the June 26, 1979 proposed rulemaking. A discussion of the deficiencies and their resolution is contained in the "Deficiencies and Remedies" section of this rule.

As stated in EPA's June 26 proposed rulemaking, EPA intends to take final action on the regulations as adopted by the District on February 26, 1981, without further proposed action, since an analysis of the adopted regulations indicates that revisions to the draft regulations were made either to satisfy EPA's cited deficiencies in the June 26 proposed rule, or to clarify or refine portions of the regulations which do not affect the basic SIP requirements. No opposition to EPA's course of action in approving the adopted regulations was received when comments were requested in the June 26, 1979 proposed rulemaking. The following paragraphs summarize the air quality problems and the SIP revision submitted for each nonattainment area in the District of Columbia.

Total Suspended Particulates (TSP)

At the time of plan submittal, the primary ambient air quality standard for TSP had been attained in most of the District of Columbia. A slightly smaller area had also attained the secondary

TSP standard. Only the most heavily urbanized portion of the city, roughly comprising the central business district, had been designated as nonattainment for both standards. EPA is processing an approval action (46 FR 48927, October 5, 1981) with respect to the District's April 1, 1980 and April 1, 1981 requests for reclassification to attainment status for the primary and secondary TSP standards. Upon formal approval of such redesignation, there will be no further need to meet the Part D requirements contained in this plan revision as they relate to TSP.

The District of Columbia submitted a plan which predicted attainment of both the primary and the secondary TSP standards by December 31, 1982 for that area designated as nonattainment. Included in the plan submitted on December 26, 1978, were an emission inventory, a diffusion modeling demonstration, a set of proposed air quality control regulations, a commitment to an annual incremental reduction as well as commitments and a proposal for further study to result in the adoption of fugitive particulate regulations. In the event the formal redesignation to attainment status for TSP is not made, the measures contained in this plan would be concluded in time for the attainment of the TSP standard by the December 31, 1982 deadline.

Existing District of Columbia regulations for the control of TSP emissions from stationary sources have been determined to be comprehensive and stringent. One additional stationary source control measure included in the December 26, 1978 SIP revision is a ban on the use of rotary cup burners in oil-fired boilers.

Regulations proposed for the control of fugitive emissions are designed to:

- (a) Control fugitive dust from roads and lots;
- (b) Control the hauling of dirt, earth, demolition debris, and other dusty materials;
- (c) Require the washing of vehicles leaving construction sites;
- (d) Control material handling operations;
- (e) Prohibit industrial fugitive dust emissions; and
- (f) Control or prohibit various other minor fugitive dust sources.

Ozone and Carbon Monoxide

EPA designated the entire District of Columbia as a nonattainment area for ozone and carbon monoxide. For the control of stationary sources, the SIP revision submitted on December 26, 1978 contains regulations providing for

control of volatile organic compound (VOC) emissions from stationary sources. For ozone nonattainment areas, EPA requires the adoption of Reasonably Available Control Technology (RACT) for eleven (11) Group I VOC source categories. In its SIP, the District regulates six (6) of these categories which exist in the District: solvent metal cleaning, tank truck gasoline loading terminals, cutback asphalt, bulk gasoline plants, gasoline service stations (Stage I vapor controls), and storage of petroleum liquids in fixed roof tanks. The District has no sources within the five (5) remaining categories and therefore is not required at this time to have regulations for them. The District, however, has committed to develop required regulations for all future VOC categories. In addition, the District has also committed to develop regulations for any additional sources which may locate in the District and for which EPA has already issued Control Techniques Guideline (CTG) documents.

The mobile source portion of the SIP for the District includes transportation control measures and an inspection and maintenance program. The Metropolitan Washington Council of Governments (COG), with extensive involvement of public and elected officials, prepared a document entitled "Washington Metropolitan Air Quality Plan for Control of Photochemical Oxidants and Carbon Monoxide" dated November 28, 1978. Portions of this plan have been incorporated by the District into its Implementation Plan revision. Furthermore, the District of Columbia has concurred on a final work program for the COG plan now being carried out under an Urban Air Quality Planning Grant for the 1982 SIP.

The success of the transportation control portion of the District's Implementation Plan is contingent on the implementation of five basic strategies. These include:

- (1) The continued construction of the Metrorail transportation system in the Metropolitan Washington region.
- (2) A continued reduction of emissions as a result of the Federal Motor Vehicle Control Program.
- (3) A program for inspection and maintenance of motor vehicles in the District of Columbia.
- (4) Enforcement of existing and new regulations for the control of volatile organic substances from stationary sources.
- (5) The expansion of transportation control measures to reduce pollution from the overall regional transportation system.

Because of the extent of the needed emission reductions, the District does

not anticipate attaining the ozone or the carbon monoxide standards by December 31, 1982, and therefore, has requested an extension of the attainment date for the ozone and the carbon monoxide standards to the end of 1987. This requires a commitment and schedule to implement an Inspection and Maintenance (I/M) program, as well as further analysis and subsequent adoption of necessary transportation control plan measures.

The District of Columbia's Implementation Plan includes provisions for an annual I/M program which covers cars and light trucks. Inspections would be carried out by the District of Columbia using the idle mode inspection test. The enabling legislation and the revised section 4.206 of Part B, Chapter IV of the Motor Vehicle Regulations prohibits the operation of non-complying vehicles.

Historical vehicles (25 years old or 15 years old for discontinued models) which are restricted to limited operations, will be excluded. A vehicle which is unable to meet the required levels of emission may be issued a conditional approval for one year if it is determined "that all reasonable repairs have been made and due to vehicle design characteristics, further repairs are neither mechanically nor economically feasible." EPA believes that the District's experience with a similar provision in the safety regulations indicates that this waiver provision will have minimal effect on the I/M program effectiveness.

In a letter dated August 26, 1980, the District agreed to establish exhaust emission standards that will provide a failure rate no less than 15% in 1983 and 1984, and no less than 17% but no greater than 20% in 1985 through 1987. Based on computer analysis of the anticipated emission reductions resulting from the District's phased failure rate commitment, EPA has determined that the District's schedule equals or exceeds the effectiveness of the required RACT emission reduction of 25% (as determined by Mobile I), and hence meets the criteria for I/M effectiveness, as long as lenient exemptions or waiver policies are not adopted. The District of Columbia plan revision, as amplified by subsequent submittals, includes an acceptable I/M schedule and adequate provisions for mechanics' training and public awareness programs.

Margin for Growth and Preconstruction Review

The District of Columbia stated (in its letter of May 3, 1979) that it intends to accommodate major point source growth

on a case-by-case basis. The District included factors for growth of area sources for TSP and ozone in its modeling efforts used in the attainment demonstrations.

Case-by-case growth is to be accounted for by the preconstruction review regulations in the District's plan. These regulations are required to meet the provisions of section 173 of the Clean Air Act. EPA's proposed rulemaking of June 26, 1979 noted several deficiencies in the District's proposed regulation. These deficiencies and the manner in which the final adopted regulation resolved these deficiencies are discussed later in this notice.

EPA Review Criteria and Procedures

EPA issued guidance on February 24, 1978 on the general criteria for SIP approval including I/M, and on July 17, 1978, regarding the specific criteria for I/M SIP approval. Both of these items are part of the SIP guidance material referred to in the General Preamble for Proposed Rulemaking, published on April 4, 1979, 44 FR 20372. The basic requirements for an approvable nonattainment SIP were described in that notice and in the following supplements:

July 2, 1979, 44 FR 38583

August 28, 1979, 44 FR 50371

September 17, 1979, 44 FR 53761

November 23, 1979, 44 FR 67182

The following list summarizes the basic requirements for nonattainment plans.

1. Evidence that the proposed SIP revision was adopted by the District after reasonable notice and public hearing.
2. A provision for expeditious attainment of the standards.
3. A determination of the level of control needed to attain the standards by 1982 and the criteria necessary for approval of any extension beyond that date.
4. An accurate inventory of existing emissions.
5. Provisions for reasonable further progress (RFP).
6. An identification of emissions growth.
7. A permit program for major new or modified sources, consistent with Section 173 of the Act.
8. Use of Reasonably Available Control Technology (RACT) control measures as expeditiously as practicable.
9. Inspection and Maintenance (I/M), if necessary, as expeditiously as practicable.

10. Necessary transportation control measures, as expeditiously as practicable.

11. Enforceable regulations.

12. An identification of and commitment to the resources necessary to carry out the plan.

13. State commitments to comply with schedules.

14. Evidence of public, local government, and State involvement and consultation.

Deficiencies and Remedies

This section contains a discussion of those deficiencies cited by EPA in the June 26, 1979 notice of proposed rulemaking. It also discusses the resolution of these deficiencies by the District's adoption of the Air Quality Control Regulations and I/M legislation.

I. Total Suspended Particulates (TSP)

1. *Adoption After Reasonable Notice and Hearing*—The regulations in the Implementation Plan revision had not been formally adopted by the District of Columbia as of the date of the proposed rulemaking and therefore EPA cited this as a major deficiency in the District's submittal. However, on June 23, 1981, the District submitted adopted regulations which meet the requirements of Part D, Title I of the Act.

2. *Pre-Construction Review*—The June 26, 1979 notice of proposed rulemaking identified portions of Section 8-2:720 of the District of Columbia's proposed regulations as deficient. On April 30, 1980, EPA provided a written statement at the District's Council hearing held by the Transportation and Environmental Affairs Committee on Bill 3-209, the Air Quality Control Regulations. The statement commented that the October 22, 1979 draft regulations still contained the deficiencies but noted that the District was considering making the required changes before Council's action adopting the Bill into law. These changes were submitted for review and, by letters of May 18, 1980 and June 30, 1980, EPA advised the District that what they were proposing was acceptable. The noted deficiencies, the District's response, and EPA's findings are as follows:

a. The proposed rulemaking stated that section 8-2:720 of the District's proposed regulations was not equivalent with section 173(1) (A) and (B) of the Act which, respectively, require a determination by the permitting agency prior to a new source permit issuance that either (1) total allowable emissions from all sources at the time of new source start-up will be sufficiently less than total allowable emissions from all sources at the time of permit application

so as to represent reasonable further progress (RFP), or (2) the new source emissions have been included in the growth increment of the SIP attainment demonstration.

Since the District of Columbia had not proposed allowances for growth per section 172(b)(5), the requirement to include section 173(1)(B) was not necessary, but the District's regulation was still deficient in meeting the requirements of section 173(1)(A) of the Act.

In EPA's April 29, 1980 written statement for the District Council's hearings on the regulations, EPA reiterated the requirement that the regulation must contain "language which satisfies section 173(1)(A)." The proposed regulation only required that the proposed source would cause to have suppressed sufficient emissions from existing sources such that the new source emissions in conjunction with the suppressed emission levels from existing sources would not result in increased emissions. This was not equivalent to Section 173(1)(A) of the Act, which requires that emissions be sufficiently less so as to represent RFP. The District's Department of Environmental Services made the required modifications to the adopted regulations which will insure that sufficient emissions will be reduced so that there will exist a decrease in emissions for which the area is designated nonattainment and that reasonable further progress will be met. Therefore, EPA has determined that the revised paragraph (e)(6)(B) of Section 8-2:720 of the adopted regulation satisfies the requirements of section 173(1)(A) of the Clean Air Act and this portion of the SIP is approved.

b. The proposed rulemaking stated that the language in section 8-2:720(e)(6)(E) of the District's proposed regulation did not encompass Section 173(4) of the Act which requires that a new source permit be issued only if the applicable implementation plan is being carried out for the nonattainment area. The District subsequently adopted a revised version of section 8-2:720(e)(6)(E) which now reads "The issuance of a permit will result in satisfaction of the requirements for a permit program specified in Section 173 of the Clean Air Act." EPA interprets this to mean that the District is committed to carrying out the provisions of Section 173 of the Clean Air Act, which include insuring that offsets provided for under its regulation are Federally enforceable and are consistent with the RFP requirements. Therefore, EPA approves section 8-2:720(e)(6)(E) as a revision to the SIP.

c. The proposed rulemaking stated that the District's proposed section 8-2:720(e)(6)(F) did not contain the provision that any emission reduction required as a precondition of permit issuance be legally binding. In a May 21, 1980 letter from the Office of Corporation Counsel, Government of the District of Columbia, language was offered to accommodate EPA's objections. On June 3, 1980 EPA advised that it would accept this regulation with the inclusion of the recommended language, on the condition that the procedure that the District of Columbia government follows to make all offsets legally binding "would be identical to that used for all SIP revisions." On May 4, 1981, the District's Department of Environmental Services advised that even though it is the District's belief that "any legal instrument executed by the District in compliance with section 8-2:720(e)(6)(F) is enforceable by EPA", the District has agreed to submit all offsetting emission reductions which are not included in a permit issued under section 8-2:720(a), entitled "Permit to Construct New Source or Modify Existing Source," to EPA as a revision to the District's implementation plan. EPA is satisfied that this meets the requirements of section 173 of the Clean Air Act and therefore approves section 8-2:720(e)(6)(F) of the regulation as a revision to the SIP.

Since the publication of the June 26, 1979 proposed rulemaking, and in response to the decision of the U.S. Court of Appeals for the D.C. Circuit in *Alabama Power Company v. Costle* 13 ERC 1993, EPA amended its regulations. These deal with new source review in nonattainment areas, including restrictions on major new source growth (40 CFR 52.24) and reflect guidance under EPA's Emission Offset Interpretative Ruling (40 CFR Part 51, Appendix S) and section 173 of the Clean Air Act (40 CFR 51.18(j)). The amendments were published on July 2, 1979 at 44 FR 38473, as amended at 45 FR 31307 (May 13, 1980); on August 7, 1980 at 45 FR 52676; and on September 11, 1980 at 45 FR 59874. These amended regulations impose new requirements on the District of Columbia which, with the exception of two changes to section 8-2:702 (definitions), are not addressed in the SIP revision being approved today.

Since the initial December 26, 1978 draft submittal, the District modified two definitions to its new source regulation in order to bring the regulation into partial compliance with the August 7, 1980 rulemaking. The definition of "potential to emit" was added and the definition of "major

stationary source" was revised. "Potential to emit" is defined as the capability of a source, at maximum design capacity, to emit a pollutant after the application of air pollution control equipment. The definition of "Major Stationary Source" now takes into account the "potential to emit" definition. For example, a source is now considered a major stationary source if it emits, or has the potential to emit (after the application of air pollution control equipment) 100 tons per year or more of any air pollutant. The District also made a distinction between new source construction permits/modified source permits and operating permits, and made changes which satisfy the deficiencies cited in the June 26, 1979 proposed rulemaking.

Since these changes are consistent with the August 7, 1980 rulemaking and since the District is currently working on revisions of its SIP to bring it into full compliance with the August 7, 1980 rulemaking, EPA is approving sections 8-2.702 and 8-2.720 of the District's air quality control regulations (relating to the District's new source review program).

3. *Reasonably Available Control Technology (RACT) as Expeditiously as Practicable*—EPA has evaluated the District of Columbia's nonattainment plan submittal and its July 25, 1979 response to the proposed rulemaking notice and has made a determination that the requirement for RACT has been satisfied. The District's existing regulations for control of TSP are sufficiently stringent, and the District has adopted the proposed regulations in the plan. Therefore, EPA approves this portion of the plan. Final approval by EPA of the District's request for redesignation under Section 107 of the Clean Air Act will negate the need for implementation of measures in this plan relating to requirements for TSP nonattainment areas.

4. *Emission Inventory*—In the notice of proposed rulemaking, EPA stated that the emission inventory submitted with the District's plan was considered adequate as a basis for the control strategy demonstration. EPA therefore approves this portion of the plan.

5. *Enforceability*—The notice of proposed rulemaking proposed approval of the District's TSP regulations and discussed several aspects relating to the requirements of Section 8-2.712 (relating to control of fugitive dust) and D.C. Pub. L. 2-133 (including changes to visible emission standards). With regard to section 8-2.712, EPA made several recommendations to the District of Columbia which EPA felt would enhance the enforceability of the

regulations. The District agreed to consider these recommendations, and subsequently incorporated some changes in its revised regulations. In a letter dated July 25, 1979, the District of Columbia stated that it believed the regulations, as proposed, were enforceable. Section 8-2.712 of the District's regulations was finally adopted on February 26, 1981.

EPA has evaluated the District's response and the adopted Section 8-2.712, and hereby approves this portion of the District's submittal.

In response to a request from the District of Columbia's Office of Corporation Counsel, EPA approved Pub. L. 2-133, relating to Visible Emissions, in a separate notice of final rulemaking on March 3, 1980 at 45 F. R. 13729.

II. Ozone

1. *Adoption After Reasonable Notice and Hearing*. The regulations in the nonattainment plan revision had not been formally adopted by the District of Columbia as of the date of proposed rulemaking and therefore EPA cited this as a major deficiency in the District's submittal. However, on June 23, 1981, the District submitted adopted regulations which satisfy EPA's cited deficiencies and meet the requirements of Part D, Title I of the Act.

2. *Attainment Date*. In the proposed rulemaking, EPA stated that an extension until December 31, 1987 for attaining the ozone standard may be approved provided the District demonstrates that attainment by 1982 is not possible, despite the implementation of RACT for stationary source categories of volatile organic compounds (VOC's), and the implementation of transportation control measures, including inspection and maintenance (I/M). The District's demonstration was based upon the standard of 0.08 ppm which was revised on February 8, 1979. EPA has made an evaluation of whether attainment of the current 0.12 ppm standard is possible by 1982 considering the implementation of all of D.C.'s control measures. It is EPA's determination that the 0.12 ppm standard cannot be met until the end of 1987. In addition, the District, by letter of July 25, 1979, commits to meeting the 0.12 ppm standard by December 31, 1987. Therefore, EPA approves D.C.'s request for an extension.

3. *Control Strategy and Demonstration of Attainment*. The District of Columbia also, in its letter of July 25, 1979, committed itself to implement measures to attain the current National Ambient Air Quality Standard (NAAQS) for ozone by the end

of 1987. This portion of the SIP is approved.

4. *Emission Inventory*. In the proposed rulemaking, it was stated that the District's submittal did not include source-specific information for the sources covered by the regulations in the SIP. Also, the District had not submitted the calculations and methods of estimation used in developing the inventory.

The Metropolitan Washington Council of Governments (COG) advised EPA that of the VOC categories required to be evaluated for the January 1, 1979 SIP submittal, the only category of sources in the District in which there is a major source is the gasoline terminal category and the District submitted a source-specific inventory for that category. The inventory for the remaining sources has been evaluated and is acceptable. COG also explained, to EPA's satisfaction, the calculations and methods of estimation used in developing the inventory. Therefore, EPA approves the District's emission inventory for VOC emissions.

5. *Reasonable Further Progress (RFP)*. The District of Columbia submitted new RFP graphs to EPA on May 3, 1979. The new RFP is a linear graph based upon 24-hour data. This submittal has been evaluated by EPA and is approved.

6. *Margin for Growth*. EPA stated in the proposed rulemaking that a tracking system for emissions growth was not addressed in the SIP. By letter of July 25, 1979, the District addresses this issue. An annual reporting system combined with the District's preconstruction review process and the Metropolitan Washington Council of Governments' (COG) transportation planning work will adequately track growth in the District of Columbia. EPA approves this portion of the ozone SIP.

7. *Reasonably Available Control Technology as Expeditiously as Practicable*. The District's final Section 8-2.707(k) of the regulations, adopted on February 26, 1981, prohibits, with exceptions, the use of cutback asphalt during the months of April through September. Allowing the use of cutback asphalt during the season from October through March is acceptable provided no violations of the ozone standard have been recorded during this period. In its letters of July 25 and 27, 1979, the District supplied EPA with confirming documentation of no ozone violations.

In its proposed regulations, the definition of "emulsified asphalt" did not state the amount of solvent, if any, allowed in this asphalt material. EPA's notice of proposed rulemaking of June 26, 1979 cited this as a deficiency. In the District's final regulation the definition

of "emulsified asphalt" has been deleted. The effect of this revision is to include emulsified asphalts containing solvents under the District's definition of "cutback asphalt." Therefore, the use of emulsified asphalts containing solvents would also be prohibited from April through September.

As previously stated, the District's adopted regulations prohibit cutback asphalt use from April through September, but exemptions are now allowed. The Mayor can exercise his discretionary authority in granting these exemptions; however, the guidelines for allowing exemptions are not specified in the regulation. EPA considers this to be a potential weakness in the District's regulation. The District, in a May 12, 1981 letter from the D.C. Department of Environmental Services, has described the process the Mayor follows in granting exemptions and has agreed to submit to EPA documentation of any exemption specifically granted under the provisions of section 8-2:707(k).

While it is not expected that excessive use of the waiver provision will occur, and while this issue is not considered of significant importance to warrant SIP disapproval, EPA still has concern about the use of this provision. Therefore, EPA intends to closely monitor the issuance of any waivers issued under section 8-2:707(k) of the District's regulations. Also, EPA reserves the right to act under Section 113(a)(2) of the Clean Air Act, 42 U.S.C. 7413(a)(2) if the District fails "to enforce the SIP effectively."

In EPA's judgement, the procedure committed to by the District, coupled with EPA's surveillance efforts, represents RACT. Therefore, EPA is approving section 8-2:707(k) of the District's regulations.

8. Inspection and Maintenance (I/M). The District of Columbia's I/M plan, as originally submitted, was deficient since the District conditioned its commitment to implement I/M on the following:

- a. Final cost estimates
- b. District Council budget approval
- c. Changes in automobile technology that would make I/M obsolete
- d. Equivalent legislation being enacted in Maryland and Virginia.

The notice of proposed rulemaking stated that these qualifications rendered the District's commitment to I/M, and therefore its compliance with the requirements of the Clean Air Act, as unacceptable. EPA's letter of May 2, 1979 requested the D.C. Mayor to submit legislation to the District Council which would amend Law 1-132 (formerly Bill 3-237) to provide for full legal authority to implement I/M. In a letter to EPA dated September 7, 1979, Mayor Barry

revised the SIP by deleting the unacceptable contingencies. The Mayor further indicated that draft legislation was being prepared to require implementation of a mandatory I/M program no later than December 31, 1982.

Three additional deficiencies were listed in the proposed rulemaking. Missing from the District's SIP was a statement that the District had the authority to prohibit operation of non-complying vehicles or authority to use some equivalent mechanism. Also required was the development and submission of a specific schedule to implement the I/M program and a statement of commitment to the development of I/M emission standards designed to result in a 25% reduction in hydrocarbon and carbon monoxide emissions by 1987.

Following a number of discussions and communications between the District and EPA, the District of Columbia enacted Law 3-152 (which is a rewrite of D.C. Law 1-132) effective March 5, 1981. This Law amends the Motor Vehicle Regulations relating to exhaust emission standards and equipment requirements for motor vehicles operated in the District of Columbia. Enactment of the law resolves the deficiency relating to formal adoption of the I/M amendments. The revised legislation also removes the previously cited deficiency regarding equivalent legislation enactment by Maryland and Virginia. The amendments included changes to section 4.206(a) of D.C. Title 32, which deals with rejected vehicles, but did not change section 4.205(a) which governs approved vehicles. EPA considers this a flaw in the District's legal authority since there is a possibility under the present regulations that a vehicle might currently qualify for both an approval sticker under section 4.205(a) because it meets all the safety requirements and a rejection sticker under section 4.206(a) because it does not meet the emission standards. EPA is therefore requesting, by separate letter, a clarification of the procedures which the District will utilize in the issuance of approval and rejection stickers. EPA is also requesting the District to consider modifying section 4.205(a) to fully clarify its legal authority in this area. Despite this defect, EPA believes that the District of Columbia Council, through its adoption of these amendments, intended to authorize the enforcement of the I/M program through the existing safety inspection sticker system and that it is possible to effectively enforce the I/M program under the existing legal authority. However, should the legal authority in

fact prove to be deficient, the SIP would no longer satisfy the requirements of section 172(b)(7) and (10) of the Clean Air Act and hence would be disapprovable.

In a July 24, 1980 letter from the District of Columbia's City Administrator, the District provided clarification of issues relating to adequate allocation of funding and resources to implement the I/M program. The District also advised of its intent to submit an official I/M schedule. The District resolved the allocation of resources problem to EPA's satisfaction through its Section 105 grant negotiations and submitted an approvable implementation schedule on May 6, 1981.

Relating to the deficiency concerning a commitment to achieve a 25% reduction in hydrocarbon and carbon monoxide emissions by 1987, the District and EPA officials met on July 15, 1980 and EPA agreed to consider the District's commitment to the establishment of exhaust emission standards that will produce specified phased failure rates through 1987. EPA's analysis concluded that acceptance of the District's program will result in the required 25% reduction in 1987 motor vehicle emissions. In a letter dated May 6, 1981 from the Mayor of the District of Columbia, the District stated its commitment to the development of the required I/M emission standards which would produce specified failure rates committed to in the District's Department of Transportation's August 26, 1980 letter. EPA approved these rates in an October 27, 1980 letter as being satisfactory to achieve the required RACT reduction in HC and CO emissions. EPA will continue to monitor the implementation of the District's I/M program to insure that the legislative and policy requirements governing the District's inspection and maintenance programs are being carried out. The resolution of this deficiency removes the final obstacle to approval of the District's I/M portion of the nonattainment plan. Therefore, EPA approves this portion of the plan.

9. Enforceability. Five enforceability deficiencies were listed in the proposed rulemaking: a) no compliance schedules, b) absence of a test method for Section 8-2:707(j)(1)(F)(ii), c) absence of a performance level for section 8-2:707(j)(1)(E)(iii), (d) absence of a definition of "emulsion cleaner" and e) the regulations did not specify who is to perform the leak test and issue the certificate in Section 8-2:707(c)(1)(C). These deficiencies have been adequately addressed and/or reviewed

by the District in its July 25, 1979 letter to EPA and/or in the adopted air quality control regulations. EPA approves these sections of the regulations.

III. Transportation Control Measures (for Ozone and Carbon Monoxide)

Recommended Measures

In the June 26, 1979 Notice of Proposed Rulemaking, it was noted that COG recommended 28 transportation measures as appropriate for consideration in the 1979 SIP submittal. These measures were selected from an initial list of 70 measures identified as having potential for reducing transportation-related emissions. COG is continuing its alternatives analysis (funded under Section 175 of the Act) which, when completed, will have reviewed all 70 of the measures to be considered for possible inclusion into the 1982 implementation plan to be submitted by the District of Columbia.

As discussed in the Notice of Proposed Rulemaking, 44 Fed. Reg. 37236 (June 26, 1979), the District of Columbia Department of Transportation has made commitments to study and/or implement 14 of the 28 COG measures. They are:

1. Continued Construction of Metrorail—The District has fulfilled its commitment to financially support the construction of a regional Metrorail system by completing the allocation of funds for the District's local share towards construction of the first 60 miles.

2. Institute Fair Market Commercial Parking Rates for Government Employees—To date, legislation has been drafted to institute parking rates for government employees and this legislation has been introduced during July 1981 and referred to the D.C. Committee on Transportation and Environmental Affairs.

3. Eliminate All Day On Street Non-Resident Parking Where Appropriate—The District of Columbia has continued to implement its Residential Parking Program as outlined in the SIP. Since the submittal of the SIP (December, 1978) and through July 1980, the number of blocks which now have residential permit parking has increased by 5%, and as of the end of May, 1980, an additional 193 blocks have been established and 83 more blocks are pending.

4. Build/Designate Exclusive Lanes or Areas for High Occupancy Vehicles—The District has made some progress in the implementation of this program and is continuing to evaluate and study other routes listed in the SIP for further implementation.

5. Build Additional Bikeways and Bicycle Paths—Since August 1977 30

miles of the 75 miles proposed in the District's Bicycle Plan have been completed.

6. Implement Fixed Route Minibus or Semi-demand Responsive Transit System—Work began in June 1980 on a joint Washington Metropolitan Area Transit Authority/D.C. DOT Neighborhood Bus Study. A draft report was completed by October 1981. Currently, the District is holding a number of community meetings to allow citizen input into the final recommendations. The District has provided implementation funding commitments for the study in FY 82 and FY 83.

7. Install Additional Bicycle Storage Facilities—The District is proceeding to install additional bicycle storage facilities. Bicycle spaces have been designated and funds have been allocated for the continuation of this program.

8. Develop a Program for Instituting a Regional Tax to Support Transit Operations—The National Capital Transportation Amendments of 1979, passed January 3, 1980, will require that each State separately address its tax contribution for the completion of Metrorail and this revises the concept of a "regional tax." The District has established a Mayoral Task Force to study alternative means of raising revenue for this purpose.

9. Develop a Coordinated Private and Public Sector Parking Management Policy—A proposal has been completed for a downtown parking study and draft zoning amendments have been prepared to support the results of the study. The District considers this a high priority for feasibility analysis in its 1982 SIP planning efforts. There are legal issues, however, relating to the revision of the parking code which still must be resolved.

10. Provide for Additional Pedestrian Facilities and Eliminate Barriers to Pedestrian Flow—The District has continued to implement its policy of building sidewalks and curb ramps where necessary with each construction project and through a sidewalk replacement program.

11. Add Signal Preemption Devices for Transit Vehicles Where Appropriate—The Northern Virginia Transportation Commission (NVTC) had originally intended to promote direct bus service from the District and Northern Virginia to Dulles under an Urban Mass Transportation Administration grant by installing signal preemption devices at various locations. The D.C. DOT agreed to install such a device at the bus origin point in the District and to paint

appropriate pavement markings and place signs.

This concept has been under reconsideration by the NVTC and a greater emphasis for a demonstration project will now concentrate on marketing activities for bus, limo, and taxi services to the airport. The signal preemption device installation now is unrelated to the new concerns and has been officially removed from the UMTA grant application. Consequently, the District's SIP commitment of assistance to NVTC in studying the use of preemption devices has been completed.

12. Improve (Traffic) Signalization in the Region—The District has selected a consultant for this \$150,000 study. The study has been completed. The recommended replacement system is expected to cost approximately 24 million dollars and the District intends to pursue its implementation by seeking federal funding for the design and implementation of this system over the next five years. Annual air quality benefits expected from the implementation are the elimination of 261 tons of hydrocarbon, 152 tons of NO_x, and 3,000 tons of carbon monoxide.

13. Develop a Regional Program for the Withdrawal of Interstate Highway Funds with Funds to be used for transit construction as the District of Columbia deems possible. The District has continued to transfer Interstate Highway funds to be used for the Metrorail construction. Satisfactory progress is being made on this transportation measure.

14. Encourage Additional Corridor Studies for Implementation of Transportation System Management Incentives.

The "Fort Lincoln Crosstown Transit Feasibility Study," including consultant assistance, is funded as part of the Urban Mass Transportation Administration Technical Studies Program. The study was completed in fiscal year 1981. The draft final report is currently in the final process of completion and a public meeting has been scheduled during November 1981.

EPA hereby approves the above-mentioned fourteen transportation commitments as part of the District's Implementation Plan.

Also, as stated in the June 26, 1979 Notice of Proposed Rulemaking, the District unilaterally proposed a Public Education Program, a Ride-sharing Strategy, and a Clean Vehicle Program. Details of these transportation measures appear in Appendix A of the District of Columbia's plan.

In the June 26, 1979 Notice of Proposed Rulemaking, EPA requested more

clarification and justification for the process of selecting or rejecting transportation control measures. EPA stated that it would concur in the rejection of any measure only after sufficient evidence is provided justifying such action. In its July 25, 1979 response, the District stated that the absence of any specific transportation control measure should not be taken to imply its rejection and that a full spectrum of potential transportation control measures will be a part of the output of the continuing transportation planning process. In addition, the COG Work Plan contains a provision for the development of criteria for assessment of transportation control measures. Since those measures not approved in today's notice will be evaluated for future implementation and either selected or rejected (in accordance with the criteria for assessment) with appropriate justification, EPA is not requiring the District to respond at this time.

As a minimum, and in order to meet the requirements for approval of the 1982 SIP submittal, the District is required to include commitments to consider, or provide detailed descriptions of the rationale for not considering, all of the measures not included in this notice.

Also required for the 1982 SIP submittal is a schedule for implementation of all 70 recommended transportation controls, with specific compliance dates for completing any studies, obtaining necessary legal authority, drafting regulations, obtaining funding, commencing implementation of each measure (unless the District can demonstrate that any particular measure is not reasonable for the Washington area) and providing specific increments of progress for reducing emissions.

Other Commitments

The District has made a commitment to EPA to consider all 70 of the control measures recommended by COG for possible inclusion in the 1982 implementation plan submittal. This commitment, the Work Plan requirements, and the commitment to study and/or implement the fourteen transportation measures approved in today's notice is acceptable to EPA as meeting the criteria for approval of the transportation control portion of the 1979 SIP. A schedule for COG's alternatives analysis was endorsed by the COG Transportation Planning Board on December 20, 1978 and submitted to EPA and the Urban Mass Transportation Administration for initial funding under Section 175 of the Clean Air Act. Initial Section 175 funding was

granted on March 30, 1979 for the development of a detailed work program for alternatives analysis as well as the commencement of its initial tasks. On September 12, 1979 COG submitted a detailed work program for Phase I of a three-phase Urban Air Quality Planning Grant to be funded under Section 175 of the Act. In November, 1979 the Urban Mass Transportation Administration authorized a grant for \$469,350 covering the first phase of the work. Thus, the outline for alternatives analysis has been submitted and a more detailed analysis is currently underway. Through its membership in COG, the District has endorsed this effort. On October 17, 1979, the District completed a Memorandum of Understanding with Virginia, Maryland and COG reaffirming joint and individual SIP responsibilities. This has been done to coordinate the region's efforts for the 1982 submittal of SIPs. Work on the air quality planning grant has continued, with additional funds of \$930,472 granted in September, 1980 for Phases II and III of the work. Efforts for developing a package of transportation measures to be included in the SIP is on schedule and progressing in a satisfactory manner.

The process for consultation involving the public interest groups and elected officials during the preparation of the transportation plan, as documented in the COG AIR QUALITY PLAN, is adequate. That plan defined transportation/air quality issues, established the planning process, and outlined the development of a program for alternatives analysis.

This process for consultation has continued in the effort covered by the Region's Urban Air Quality Planning Grant. In addition, the District has prepared for submittal to EPA after public hearing, a revision to its SIP dealing with the consultation requirements of Section 121 of the Clean Air Act as described in the June 18, 1979 Federal Register notice, 44 FR 35176.

Public Comments on Proposal

Two commenters submitted extensive comments which they requested be considered as part of the record for each State plan. Each of the points raised by the commenters and EPA's responses appear in the Notice of Final Rulemaking for the State of Delaware, 45 FR 14551, March 6, 1980. Although some of the issues raised are not relevant to provisions in the District's submittal, EPA is notifying the public of its response to these comments at this time.

Another commenter expressed concern about the availability of emulsified asphalts with low solvent

content for all applications in all regions of the country. These comments were addressed in the Notice of Final Rulemaking for the State of Maryland, 45 FR 53472, August 12, 1980.

Numerous other comments were received from D.C.'s Environmental Health Administration, Bureau of Air and Water Quality, and from two environmental groups.

The District's comments basically addressed the unresolved issues at the time of the proposed rulemaking and provided additional information and clarification in several areas.

The environmental groups generally supported the findings of deficiencies of the Environmental Protection Agency in its proposed rulemaking, and generally recommended that EPA conditionally approve the District's plan contingent on D.C.'s satisfying the cited plan deficiencies. The deficiencies especially noted were those relating to adoption of the regulations, transportation and I/M, reasonable further progress, new source review and permit fees.

Due to the voluminous nature of the comments and EPA's responses, they are not addressed in detail in this notice but are included in detail in the Rationale Document for this final rulemaking which can be inspected at the locations identified under the ADDRESSES section of this notice. However, the major thrust of the comments concerned the lack of progress on the part of the District in identifying, adopting, and implementing measures to attain the standards as expeditiously as practicable.

Both environmental groups objected to the fact that the District had not formally adopted the air quality regulations and measures in the plan and that the District had few commitments to carry out transportation control measures and had rejected others without adequate explanation. The District has since responded to these comments by adopting the air quality control regulations in the plan and by explaining (in a July 25, 1979 letter from the Chief, Bureau of Air and Water Quality) that they had not rejected the transportation control measures that were not included but were committing to review a full spectrum of potential transportation control measures as part of the continuing planning process. In today's notice, EPA specified that the minimum acceptable requirements for approval of the 1982 SIP submittal would include a commitment from the District to consider (or provide rationale for not considering) all of the measures not included in the 1979 plan revision.

One commenter stated that EPA should conditionally approve the plan unless the District secures an unqualified commitment to I/M, adopts legislation reflecting this commitment, and submits an approvable implementation schedule. The District has since satisfied these deficiencies relating to their I/M program; therefore, EPA is approving their plan.

Comments were received relative to the lack of a demonstration of reasonable further progress (RFP) in the plan. EPA requested, and the District submitted, a revised RFP submittal on May 3, 1979. This RFP shows 1987 attainment of the NAAQS for ozone based on 24-hour emissions. A linear RFP projection is acceptable to EPA provided attainment of the NAAQS is achieved by 1987. The District's new RFP submitted on May 3, 1979 shows attainment of the standard by 1987 and is therefore acceptable. The District of Columbia can revise this schedule provided EPA approves of such a revision.

Extensive comments were received regarding the fact that the District's new source review program was deficient and did not meet the requirements of section 173 of the Clean Air Act. As explained in the "Deficiencies and Remedies" section of this notice, all outstanding issues relating to Section 173 of the Act have been resolved.

One commenter stated that the use of rollback modeling in the District of Columbia was inappropriate and the District should be required to use a more sophisticated modeling technique. Although more sophisticated models can provide a more accurate estimation of the degree of control required to attain air quality standards, the required data for calibration of these models in the D.C. area was not available at the time of SIP submittal. The proportional rollback method satisfies the requirement of 40 CFR Part 51 for the 1979 SIP revision. EPA is, however, requiring more sophisticated techniques such as city-specific Empirical Kinetic Modeling Approach (EKMA) for the plan revision due in 1982.

As noted above, a more detailed analysis of public comments can be found in the Rationale Document to this Rulemaking action.

EPA Actions

EPA is taking final action to approve the District of Columbia's plan revisions for attainment of the National Ambient Air Quality Standards for TSP, ozone and carbon monoxide as submitted on December 26, 1978 and amended through

the date of this notice. The portions of this plan relating to attainment of the National Ambient Air Quality Standards for TSP will no longer be required upon formal redesignation of the District's attainment status under Section 107 of the Clean Air Act which EPA will publish under separate rulemaking.

In the June 26, 1979 Notice of Proposed Rulemaking, EPA requested public comment on the revoking or revising of the below-listed sections of Title 40, Part 52 of the Code of Federal Regulations in order to make them meaningful and consistent with the plan upon which EPA is taking final action today. The District's July 25, 1979 comments to EPA on the Notice of Proposed Rulemaking reflected two editorial changes regarding the revised and revoked §§ 52.483(a) and 52.483(b). EPA has noted these two editorial changes in today's final action on the following provisions:

Approval Status (Heavy Duty Vehicles), § 52.472(c), (revoke).
Legal Authority, § 52.474, (revoke).
Control Strategy, § 52.483(a), (revise).
Compliance Schedules, § 52.476(c), (revoke).
Identification of Plan, § 52.470, (revise). (Revision made at 46 FR 9948, January 30, 1981).
Parking Surcharge Measures, § 52.476(d), (revoke).
Elimination of Free On-Street Commuter Parking, § 52.476(e), (revoke).
Exclusive Bus Lanes, § 52.476(h), (revise).
Review of New Sources and Modifications, § 52.478 (revoke).
Management of Parking Supply, § 52.493, (revoke).
Source Surveillance, § 52.479, (revise).
Attainment Dates for National Standards, § 52.481, (revise).
Control Strategy: Carbon Monoxide and Photochemical Oxidants (Hydrocarbons), § 52.483(b), (revoke).
Inspection and Maintenance Program, § 52.490, (revoke).
Bicycle Lanes and Storage Facilities, § 52.491, (revoke).
Medium Duty Air/Fuel Control Retrofit, § 52.492, (revoke).
Heavy Duty Air/Fuel Control Retrofit, § 52.494, (revoke).
Oxidizing Catalyst Retrofit, § 52.495, (revoke).
Vacuum Spark Advance Disconnect Retrofit, § 52.496, (revoke).
In view of this evaluation, the Administrator approves the plan revision submitted by the District of Columbia on December 26, 1978. Under Executive Order 12291, EPA must judge whether a regulation is

"Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(42 U.S.C. 4701-642)

Dated: December 8, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the District of Columbia was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Chapter I, Title 40 of Part 52 of the Code of Federal Regulations is amended as follows:

Subpart J—District of Columbia

1. Section 52.470 is renumbered as follows:

a. Move paragraph (d) (Plan revisions were submitted on January 29, 1973 by the Department of Environmental Services.) under paragraph (c)(3) and renumber it paragraph (c)(4).

b. Renumber paragraphs (c)(4) through (c)(8) as paragraphs (c)(5) through (c)(9). (Paragraph (c)(9) was previously reserved.)

c. Paragraph (c)(10) remains reserved. Paragraphs (c)(11), (c)(12) and (c)(13) remain as is.

2. Add paragraphs (c)(19), (c)(20), and (c)(21) as follows:

§ 52.470 Identification of Plan.

* * * * *

(c) * * *
(19) The Plan revision entitled "Revisions to the Implementation Plan for the District of Columbia for Attainment of the National Ambient Air Quality Standards for Particulates, Oxidants and Carbon Monoxide" for all areas designated nonattainment as of March 3, 1978 and September 12, 1978 submitted on December 26, 1979 by the Mayor. Included was a request for

revocation and/or revision of sections of Subpart J which have been mooted by court decision (*District of Columbia v. Costle*, 567 F. 2d 1091 (D.C. Cir. 1977)). Congressional action, or rescission by EPA.

(c)(20) Inspection and Maintenance Program Amendments to the transportation control portion of the nonattainment plan were submitted by the Mayor on September 7, 1979 and May 6, 1981.

(c)(21) Amendments to the District's Air Quality Control Regulations for control of particulate matter, carbon monoxide and ozone were submitted by the Mayor on June 23, 1981.

§ 52.471 [Amended]

3. Section 52.471 is amended by changing the heading "photochemical oxidants (hydrocarbons)" to "ozone."

4. Section 52.472 is amended by revising paragraph (c) as follows:

§ 52.472 Approval status.

(c) With the exceptions set forth in this subpart, the Administrator approves the District of Columbia's plan for the attainment and maintenance of the national standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all requirements of Part D, Title 1, of the Clean Air Act as amended in 1977.

5. Section 52.473 is added as follows:

§ 52.473 Extensions.

The Administrator hereby extends the date for attainment of the ozone and carbon monoxide National Ambient Air Quality Standards in the District of Columbia portion of the National Capital Interstate Air Quality Control Region to allow for attainment of the NAAQS as expeditiously as possible but no later than December 31, 1987.

§ 52.474 [Amended]

6. Section 52.474, *Legal Authority*, is amended by removing paragraph (a).

§ 52.476 [Amended]

7. Section 52.476, *Compliance Schedules*, is amended by removing and reserving paragraphs (a) through (d).

8. Section 52.479 (Source surveillance) is amended by removing and reserving paragraph (a), removing paragraph (c), and revising paragraph (b) as follows:

§ 52.479 Source surveillance.

(a) [Reserved]

(b) The requirements of § 51.19(d) are not met with respect to the strategies for carpool locator service. The remaining

transportation measures in the previously Federally-promulgated implementation plan have been mooted by court decision (*District of Columbia v. Costle*, 567 F. 2d 1091 (D.C. Cir. 1977)) or rescinded by EPA.

9. Section 52.481 (Attainment dates for national standards) is amended by revising the table as follows:

§ 52.481 Attainment dates for national standards.

Air quality control region	Pollutant					
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide
	Primary	Secondary	Primary	Secondary		
National Capital Interstate	a ¹	a ²	b ⁴	b ³	b ⁴	c ⁵

a December 31, 1982.

b Air quality levels presently below secondary standards.

c As expeditiously as practicable but not later than December 31, 1987.

d Previously "Photochemical Oxidants (hydrocarbons)."

e Previously 13 years from plan approval or promulgation.

f Previous footnote: Transportation and/or land use control strategy to be submitted no later than April 15, 1973.

g Previous footnote: Air quality levels presently below secondary standard.

h Previous footnote: May 31, 1977.

NOTE.—Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are provided as numeric footnotes in this chart.

10. The following sections are removed:

§ 52.478 [Removed]

Section 52.478 (Review of new sources and modifications) is removed.

§ 52.483 [Removed]

Section 52.483 (Control Strategy: Carbon Monoxide and Photochemical Oxidants (hydrocarbons)) is removed.

§ 52.490 [Removed]

Section 52.490 (Inspection and maintenance program) is removed.

§ 52.491 [Removed]

Section 52.491 (Bicycle lane and storage facilities) is removed.

§ 52.492 [Removed]

Section 52.492 (Medium duty air/fuel control retrofit) is removed.

§ 52.493 [Removed]

Section 52.493 (Management of parking supply) is removed.

§ 52.494 [Removed]

Section 52.494 (Heavy duty air/fuel control retrofit) is removed.

§ 52.495 [Removed]

Section 52.495 (Oxidizing catalyst retrofit) is removed.

§ 52.496 [Removed]

Section 52.496 (Vacuum spark advance disconnect retrofit) is removed.

[PR Doc 81-38700 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-3-FRL-1989-1]

Approval and Promulgation of Implementation Plans; Approval of Revisions of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of revisions to the Maryland State Implementation Plan (SIP) providing variances from the State's no visible emission regulations for the American Cyanamid Company at Havre de Grace, Maryland and the Potomac Electric Power Company at Dickerson, Maryland. The variance for American Cyanamid would allow visible emissions not exceeding 30% opacity while the variance for Potomac Electric Power Company would allow visible emissions not exceeding 20% opacity. The State of Maryland has adequately justified that neither of the variances will cause violations of air quality standards for particulates.

DATE: These actions will be effective on February 16, 1982, unless notice is received on or before January 15, 1982, that someone wishes to submit adverse or critical comments on either or both variance requests.

ADDRESSES: Comments should be sent to Henry J. Sokolowski, P.E., Chief, Maryland, Delaware, D.C. Metro Section, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th

and Walnut Streets, Philadelphia, PA 19106. Attn.: AH035/36MD.

Copies of these revisions of the Maryland SIP and accompanying support documentation are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 10th Floor, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn.: Patricia Sheridan

State of Maryland, Air Management Administration, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201, Attn.: Mr. George Ferreri

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W. (Waterside Mall), Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Mr. Henry J. Sokolowski, P.E., Chief, MD-DE-DC Metro Section, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, 6th and Walnut Streets, Curtis Building, Philadelphia, PA 19106 (telephone 215/597-8991) Attn.: AH035/036MD.

SUPPLEMENTARY INFORMATION:

Variance for the American Cyanamid Company (AH036MD)

On July 17, 1981, the State of Maryland submitted to EPA a Secretarial Order consisting of a variance for the American Cyanamid Company, Havre de Grace, Maryland from the Code of Maryland Air Regulation (COMAR 10.18.06.02B) which generally prohibits visible emissions from sources located in the Metropolitan Baltimore Intrastate Air Quality Control Region (AQCR). The variance would allow visible emissions not exceeding 30% opacity to be emitted from ovens 1, 2, and 3. According to the terms of the Order, the variance will expire on July 8, 1986.

The State concludes that the Company will still meet the applicable mass emission limitation for total suspended particulates (TSP) and that the variance will not result in violations of National Ambient Air Quality Standards for Particulate (TSP).

The State has included in the Order a condition that the Company will continue to review technology related to the curing oven process and evaluate substitute adhesive components which would not cause visible emissions. The Company also must continue to comply fully with all other applicable air pollution control requirements.

The State also provided proof that a public hearing on this variance request was held on September 25, 1980 in Havre de Grace, Maryland in accordance with the provisions of 40 CFR 51.4.

Variance for the Pepco-Dickerson Power Generating Station (AH035MD)

On June 23, 1981 the State of Maryland submitted to EPA a Secretarial Order consisting of a variance for the Potomac Electric Power Company at Dickerson, Maryland from the State regulations which prohibit visible emissions (COMAR 10.18.09.05A(2)). The variance would allow visible emissions not exceeding 20% opacity. Accordingly to the terms of the Order, the variance will expire five years after approval by EPA. Also during this five-year period, the Company (Potomac Electric Power) will continue to investigate new technologies to reduce or eliminate visible emissions, and submit annual reports of their findings to Maryland.

The Company has submitted test data which demonstrates that its particulate emissions meet all applicable air quality regulations and those emissions will not increase as a result of this revision. The State of Maryland submitted proof that a public hearing with respect to this revision was held in Poolesville, Maryland on May 18, 1980 in accordance with the requirements of 40 CFR 51.4.

Additional Information Submitted by Maryland

On September 10, 1981, the State of Maryland submitted supplemental information concerning its procedures to enforce the visible emission limitations provided by the above-discussed Secretarial Orders. The State informed EPA that stack test procedures of COMAR 10.18.01.04C ("Test Methods for Stationary Sources," TM 73-116) will be followed. The State also informed EPA that the generic exceptions provided for in the State's visible emissions regulations will continue to apply to both the American Cyanamid and PEPCO-Dickerson plant's variance requests.

EPA Actions

EPA's review of these variance requests concurs with the State's conclusion that neither variance will result in violations of the NAAQS for TSP. Therefore, the Administrator approves the above-described revisions to the Maryland State Implementation Plan without prior proposal. Accordingly, 40 CFR 52.1070 (identification of Plan) of Subpart V (Maryland) is revised to reflect the Administrator's approval actions.

The public is advised that these actions will be effective February 16, 1982. However, if notice is received on or before January 15, 1982 that someone wishes to submit adverse or critical comments on either or both variance requests, the appropriate action or actions will be withdrawn and subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

Pursuant to the provisions of 5 U.S.C. 605(b) the administrator has certified that SIP approvals under sections 107 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981). This action constitutes a SIP approval under Sections 107 and 172 within the terms of the January 27 certification. This action only approves State actions. It imposes no new requirements.

Under section 307(b)(1) of the Clean Air Act, judicial review of these actions is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before February 16, 1982.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1981. (42 U.S.C. 7401-642))

Dated: December 8 1981.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart V—Maryland

1. In § 52.1070, paragraphs (c)(56) and (c)(57) are added to read as follows:

§ 52.1070 Identification of plan.

(c) The Plan Revision listed below was submitted on the date specified***
(56) A Secretarial Order submitted by the State of Maryland on June 23, 1981 consisting of a variance issued to the Potomac Electric Power Company at Dickerson, Maryland exempting the company from the "no visible emissions" requirements of COMAR

10.18.09.05A(2) until five years from the date of approval by EPA.

(57) A Secretarial Order submitted by the State of Maryland on July 17, 1981 consisting of a various issued to the American Cyanamid Company, Havre de Grace, Maryland from the "no visible emissions" requirement of COMAR 10.18.06.02B until July 8, 1986.

[FR Doc. 81-35937 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-2-FRL 1935-3]

Approval and Promulgation of Implementation Plans; Identification of State Regulatory Provisions, New Jersey and the Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice promulgates two new sections in that part of the Code of Federal Regulations dealing with the State Implementation Plans for New Jersey and the Virgin Islands. These sections are intended to identify state regulatory provisions which have been approved by the Environmental Protection Agency as part of the State Implementation Plans for these two areas. A similar action was also proposed with regard to the implementation plan for Puerto Rico. No action is being taken on this aspect of the proposal.

EFFECTIVE DATE: December 16, 1981.

ADDRESSES: Copies of the SIP revisions are available for public inspection during business hours at:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW, Washington, D.C. 20460
New Jersey Department of Environmental Protection, Bureau of Air Pollution Control, Room 1108, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625

Government of the Virgin Islands of the United States, Department of Conservation and Cultural Affairs, Office of the Commissioner, Charlotte Amalie, St. Thomas 00801

The Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection

Agency, Region II Office, 26 Federal Plaza, New York, New York 10278; (212) 264-2517.

SUPPLEMENTARY INFORMATION: On May 15, 1981 (46 FR 26793), the Environmental Protection Agency (EPA) proposed adding three new sections to Title 40, Code of Federal Regulations, Part 52 (40 CFR Part 52) in order to provide identification of the state regulatory provisions which have been approved by EPA as part of the State Implementation Plans (SIPs) for New Jersey, Puerto Rico and the Virgin Islands.

Since 1972, when the original SIPs were first submitted to EPA, the plans have undergone numerous revisions. Although the CFR does provide, in the "Identification of plan" section, a chronological listing of SIPs and SIP revisions submitted to EPA, it does not now indicate the current EPA-approved state regulatory requirements which are part of the SIP. Because this situation has led to some uncertainty and confusion on the part of the regulated community and even the states, EPA is today promulgating new §§ 52.1605 and 52.2773 to 40 CFR Part 52, Subparts FF and CCC for New Jersey and the Virgin Islands, respectively. These sections will be updated as necessary to provide a timely, accurate and complete listing of the specific EPA-approved state regulations or parts thereof, which are a part of the SIP.

The aforementioned new sections are being promulgated as proposed on May 15, 1981 (46 FR 26793), in the regulatory section at the end of this notice. They will identify the State regulation, the State adoption or submission date, the EPA approval date and Federal Register citation, and comments when necessary. In its May 15 notice EPA advised the public that comments on its proposed action could be submitted.

Comments were received in letters from the New Jersey Department of Environmental Protection, Covington and Burling on behalf of the Puerto Rico Manufacturers Association, and the Puerto Rico Environmental Quality Board (PREQB). In light of the comments from Covington and Burling and the PREQB, EPA has decided to withhold at this time promulgation of the proposed revision to Subpart BBB concerning Puerto Rico.

The letters from the last two commentators indicate a significant misconception of the nature and intent of EPA's proposal. The proposed action on May 15 was meant to provide an up-to-date listing of the Commonwealth-adopted, EPA-approved regulatory provisions of the Commonwealth's

implementation plan. It was not meant to take new action on these provisions or change previous actions. It was solely an effort to clarify for the public and interested and affected parties, the regulatory content of the currently approved implementation plan. The letters from Covington and Burling and the PREQB request substantive and "housekeeping" revisions beyond the scope of EPA's proposed action. Such actions as revoking certain CFR sections or provisions of a regulation require a separate proposed rulemaking action. EPA will proceed with such an action in the future.

EPA received comments on two regulations from the New Jersey Department of Environmental Protection (NJDEP). The State points out that since section 16.3 of the December 17, 1979 version of Subchapter 16, Control and Prohibition of Air Pollution by Volatile Organic Substances, is equivalent to the federally promulgated regulations at 40 CFR 52.1595 and 52.1599 (relating to gasoline transfer in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Air Quality Control Regions), and the regulation's State-effective date of June 1, 1981 has already passed, the federal rules should be revoked. This request also falls outside the scope of EPA's proposed action to identify presently applicable SIP provisions. EPA agrees with NJDEP and has proposed to take this and other related actions in a separate Federal Register notice of proposed rulemaking (August 4, 1981; 46 FR 39611). However, because this action cannot be reflected until the August 4 proposal is finalized, no change is being made at this time to the proposed entry regarding section 16.3.

The second comment from NJDEP concerns the Subchapter 10, Sulfur in Coal, entry in the table. The comments indicate that notice of a coal conversion is only required for "large zone 3" sources, as clearly identified in 40 CFR 52.1601(b). EPA agrees with this clarification and has so modified the table entry being promulgated.

Today's action is being made effective immediately because it imposes no burdens on the regulated community or the states and sets no new requirements. Its sole purpose is to clearly identify regulatory provisions of the applicable SIP's.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section

307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709, January 27, 1981). Today's action is within the terms of the January 27 certification. This action imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact

Analysis. This regulation is not Major because it merely serves to identify clearly state regulations which have been approved by EPA as part of the SIPs for New Jersey and the Virgin Islands. This action by EPA does not entail any change to the approval status of any SIP provision nor a promulgation of any substantive SIP provision. The listing is merely a compilation, in a more clearly identifiable and easily referenced form, of state regulatory provisions which are part of the applicable SIPs as a result of prior EPA rulemaking action. This listing should assist the public, the regulated community, the states, and EPA in identifying applicable plan requirements. This regulation was submitted to the Office of Management

and Budget (OMB) for review as required by Executive Order 12291.

(Secs. 110, 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601))

Dated: December 8, 1981.

Anne M. Gorsuch,
Administrator, Environmental Protection
Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations, is amended as follows:

1. A new § 52.1605 is added to Subpart FF to read as follows:

Subpart FF—New Jersey

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
Subchapter 1, "General Provisions"	May 1, 1956	May 31, 1972, 37 FR 10680	
Subchapter 2, "Control and Prohibition of Open Burning"	June 8, 1981	Sept. 30, 1981, 46 FR 47779	
Subchapter 3, "Control and Prohibition of Smoke From Combustion of Fuel"	Jan. 16, 1972	May 31, 1972, 37 FR 10680	
Subchapter 4, "Control and Prohibition of Solid Particles From Combustion of Fuel"	Mar. 27, 1972	do	
Subchapter 5, "Prohibition of Air Pollution"	Jan. 1, 1961	do	
Subchapter 6, "Control and Prohibition of Particles From Manufacturing Processes" (except Section 6.5)	May 23, 1977	Jan. 26, 1979, 44 FR 5427	Section 6.5, "Variances," is not approved (40 CFR 52.1570(c)(20) and 52.1604(a)). Any State-issued variances must be formally incorporated as SIP revisions if EPA is to be bound to their provisions (40 CFR 52.1604(a)).
Subchapter 7, "Sulfur"	Mar. 1, 1967	May 31, 1972, 37 FR 10680	
Subchapter 8, "Permits and Certificates"	June 1, 1976	Nov. 18, 1976, 41 FR 50823	
Subchapter 9, "Sulfur in Fuels"	June 4, 1979	June 4, 1979, 44 FR 31979	
Subchapter 10, "Sulfur in Solid Fuels"	July 14, 1981	Nov. 3, 1981, 46 FR 54542	Notification of "large zone 3 coal conversions" must be provided to EPA (40 CFR 52.1601(b)).
Subchapter 11, "Incinerators"	Aug. 15, 1968	May 31, 1972, 37 FR 10680	
Subchapter 12, "Prevention and Control of Air Pollution Emergencies"	Mar. 27, 1972	do	
Subchapter 13, "Ambient Air Quality Standards"	Mar. 5, 1973	June 15, 1973, 38 FR 15723	
Subchapter 14, "Control and Prohibition of Smoke From Diesel-Powered Motor Vehicles"	Jan. 18, 1971	May 31, 1972, 37 FR 10680	
Subchapter 15, "Control and Prohibition of Air Pollution From Light-Duty Gasoline-Fueled Motor Vehicles"	July 5, 1972	do	
Subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Substances" (with provisions as noted).	Dec. 17, 1979	Apr. 6, 1981, 46 FR 20556	Emission limitations adopted by the State under and complying with §§ 16.6(c)(4) and 16.6(c)(5) become applicable if transmitted to EPA. Variances adopted by the State pursuant to §§ 16.9 and 16.10 become applicable only if approved by EPA as SIP revisions (40 CFR 52.1582(d), published at 46 FR 20551 on April 6, 1981).
Subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Substances"/Section 16.3 (except as noted).	Mar. 1, 1976	July 7, 1976, 41 FR 27833	Section 16.3 is disapproved insofar as it relates to gasoline transfer in the New Jersey-New York-Connecticut and Metropolitan Philadelphia Air Quality Control Regions (40 CFR 52.1582(c)). Provisions of federally promulgated regulations (40 CFR 52.1585 and 52.1599) are applicable to these areas, while provisions of the Mar. 1, 1976 version of § 16.3 are applicable to the other areas (Northeast Pennsylvania-Upper Delaware Valley and New Jersey Intrastate Air Quality Control Regions). These provisions remain applicable as interim requirements insofar as they are not inconsistent with provisions of the Dec. 17, 1979 version of Subchapter 16.
Subchapter 18, "Control and Prohibition of Air Pollution From New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas (Emission Offset Rule)" (except as noted regarding §§ 18.1 and 18.2(e)(1)).	Sept. 8, 1980	Apr. 15, 1981, 46 FR 21996	The definitions of "significant emission increase," in § 18.1, and § 18.2(e)(1) are disapproved. Federally promulgated regulations (40 CFR 52.1578(c), published at 46 FR 21996 on April 15, 1981) are applicable.

2. A new § 52.2773 is added to Subpart CCC to read as follows:

Subpart CCC—Virgin Islands

§ 52.2773 EPA-approved Virgin Islands regulations.

Territory regulation	Submission date	EPA approved date	Comments
Section 204-20, "Definition of Terms"	Jan. 31, 1972	May 31, 1972, 37 FR 10905	
Section 204-21, "Regulation to Control Open Burning"	do	do	
Section 204-22, "Regulations to Control Emissions of Visible Air Contaminants"	do	do	
Section 204-23, "Regulations Governing Emissions of Particulate Matter"	do	do	
Section 204-24, "Storage of Petroleum or Other Volatile Products"	do	do	
Section 204-25, "Preventing Particulate Matter from Becoming Air-Borne"	do	do	
Section 204-26, "Sulfur Compounds Emissions Control" (except as noted for St. Croix regarding Subsection (a)(2))	June 3, 1976	July 12, 1976, 41 FR 26493	Subsection 204-26(a)(2) is not approved as it applies to sources on St. Croix; with the exception of the Virgin Islands Water and Power Authority's Christiansted Power Plant. Applicable sulfur content limitations for sources on St. Croix, except the Christiansted Power Plant, are set out in the version of Subsection 204-26(a)(2) submitted to EPA on January 31, 1972 (See below) (40 CFR 52.2760(b)).
Section 204-26, "Sulfur Compounds Emissions Control" / Subsection (a)(2)?"	Jan. 31, 1972	May 31, 1972, 37 FR 10905	Applicable to sources on St. Croix, with the exception of the Virgin Islands Water and Power Authority's Christiansted Power Plant.
Section 204-27, "Air Pollution Nuisances Prohibited"	do	do	
Section 204-28, "Internal Combustion Engine Limits"	do	do	
Section 204-29, "Upset, Breakdown or Scheduled Maintenance"	do	do	
Section 204-30, "Circumvention"	do	do	
Section 204-31, "Duty to Report Discontinuance or Demolition"	do	do	
Section 204-32, "Variance Clauses"	do	do	
Section 206-20, "Permits Required"	do	do	
Section 206-21, "Transfer"	do	do	
Section 206-22, "Applications"	do	do	
Section 206-23, "Cancellation of Applications"	do	do	
Section 206-24, "Provisions of Sampling and Testing Facilities"	do	do	
Section 206-25, "Standards for Granting Applications"	do	do	
Section 206-26, "Conditional Approval"	Aug. 17, 1972	Oct. 28, 1972, 37 FR 23092	
Section 206-27, "Denial of Applications"	Jan. 31, 1972	May 31, 1972, 37 FR 10905	
Section 206-28, "Further Information"	do	do	
Section 206-29, "Appeals"	do	do	
Section 206-30, "Review of New Sources and Modifications" (excluding Subsection 206-30(f)(6)).	Feb. 12, 1974	Aug. 10, 1975, 40 FR 42013	Subsection 206-30(f)(6) is disapproved since sources of minor significance are not identified in Section 206-30. A federally promulgated regulation (40 CFR 52.2775(g)), correcting this deficiency and a public participation deficiency, is applicable.
Section 204-31, "Review of New or Modified Indirect Sources"	do	do	

PR Doc. 81-35777 Filed 12-16-81; 8:45 am

BILLING CODE 5560-38-M

40 CFR Part 52

[A-3-FRL-1991-2]

Approval and Promulgation of Implementation Plan; Approval of Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 7, 1981 (46 FR 40218), EPA proposed approval of a revision to the Pennsylvania State Implementation Plan (SIP) which modifies the sulfur dioxide (SO₂) regulations for the Beaver Valley Air Basin. This air basin will be divided into an upper and a lower section, and the regulations for the upper section will be changed. EPA has determined this

modification will not cause or contribute to violations of the SO₂ National Ambient Air Quality Standards (NAAQS). Today, EPA is announcing final approval of this revision to the Pennsylvania SIP.

EFFECTIVE DATE: January 15, 1982.

ADDRESSES: Copies of the materials submitted by the Commonwealth of Pennsylvania and comments received on these materials may be examined during normal business hours at:

U.S. Environmental Protection Agency, Air Media and Energy Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA. 19106, Attn.: Ed Shoener

Department of Environmental Resources, Bureau of Air Quality Control, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, Attn.: Gary L. Triplett

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Waterside Mall, Washington, D.C. 20460
Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Mr. Ed Shoener (3AH11), U.S. Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, PA 19106, telephone: 215/597-8179.

SUPPLEMENTARY INFORMATION: On August 7, 1981 (46 FR 40218), EPA proposed approval of a revision to the Pennsylvania SIP. The revision will divide the Beaver Valley Air Basin into an Upper Beaver Valley Air Basin (the Lawrence County portion) and a Lower Beaver Valley Air Basin (the Beaver

ADDRESSES: Written comments should be addressed to Denise W. Pack of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies

of the materials submitted by South Carolina and Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street SW., Washington, D.C. 20460
Library, Environmental Protection
Agency, Region IV, 345 Courtland
Street NE., Atlanta, Georgia 30365
Library, Office of Federal Register, 1100
L Street NW., Room 8401,
Washington, D.C. 20005.

Copies of the materials submitted by South Carolina may also be examined at: Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Copies of the materials submitted by Florida may also be examined at the: Bureau of Air Quality Management, Division of Environmental Programs, Twin Towers Office Building 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT:

Denise W. Pack, Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION:

Implementation plan revisions required under Part D, Title I of the Clean Air Act were submitted by the States of South Carolina and Florida on December 22, 1978, and April 30, 1979, respectively. EPA proposed conditional approval of the South Carolina revisions on July 13, 1979 (44 FR 40901). This notice listed in detail the deficiencies contained in the South Carolina plan. That detail will not be repeated here. The final rule conditionally approving South Carolina's *Implementation* plan was published in the *Federal Register* of January 29, 1980 (45 FR 6572).

On June 17, 1981 (46 FR 31675) EPA proposed full approval of the plan's total suspended particulate (TSP) control strategy for Charleston (except for the Pittsburg-Meeting Street area) and Georgetown, the ozone related volatile organic compound (VOC) regulations and the offset provisions, having found that all of the deficiencies except the one related to the Pittsburg-Meeting Street in Charleston (TSP) nonattainment area had been adequately corrected by the amendments submitted by South Carolina.

EPA is today announcing full approval of the South Carolina revisions including the portion relating to the Pittsburg-Meeting Street in Charleston (TSP) nonattainment area. Microinventory

studies conducted in Charleston indicate that the Macalloy Corporation's facility is the major contributor to the high levels of particulates in the Pittsburg-Meeting Street nonattainment area. On April 29, 1981 the SCDHEC submitted a special operating permit for the Macalloy Corporation facility which EPA has determined meets the Reasonably Available Control Technology (RACT) requirements for nonattainment areas as contained in 40 CFR Part 51. The permit was adopted by the State Board of Health and Environmental Control as a SIP revision after a public hearing conducted on April 1, 1981. EPA feels that the special operating permit submitted by the SCDHEC for Macalloy Corporation fulfills the requirements of the conditional approval of January 29, 1980.

On July 16, 1979, (44 FR 41254), EPA proposed conditional approval of Florida's SIP revisions for nonattainment areas. That notice gave details on the sulfur dioxide (SO₂) nonattainment plan for the northwest portion of Pinellas County and listed the items necessary to correct the deficiencies in this part of the plan. Final conditional approval of the Florida plan was published in the *Federal Register* of March 18, 1980 (45 FR 17140). Both notices addressed the conditional approval given to the Florida ozone (O₃) nonattainment area. Final approval of that portion of the nonattainment plan was published on May 14, 1981 (46 FR 26640). Today's notice removes the condition on the approval of the SO₂ portion of Florida's nonattainment plan.

On August 4, 1980, the Florida DER submitted as an addendum to the SIP for nonattainment areas a permit for the Stauffer Chemical Company. The permit contains provisions which require Stauffer Chemical Company to: (1) annually update the emission inventory for the SO₂ nonattainment area; (2) test the kiln stack emissions in accordance with EPA Reference Methods; and, (3) limit the SO₂ emissions from the kiln to a specified limit of no more than 413 pounds per three hour period. EPA reviewed this permit and determined that it meets the conditions set in the notices of July 16, 1979 and March 18, 1980.

Actions: (1) EPA today approves the materials submitted by South Carolina to satisfy conditions on the approval of the State's 1979 revisions for nonattainment areas. This action means that the revisions are not fully approved.

(2) EPA is today approving the revision in the Florida plan consisting of a special operating permit for Stauffer Chemical Company located in Pinellas County, Florida. This means that

Florida's 1979 revisions for nonattainment areas are now fully approved.

The approval actions on the permits for the Macalloy Corporation and the Stauffer Chemical Company are being taken without prior proposal because these revisions are noncontroversial and of limited impact, and no comments are anticipated. The public should be advised that this action will be effective February 16, 1982. However, if notice is received on or before January 15, 1982 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it merely ratifies States actions and imposes no new burden on sources.

Under section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of this action is available only by the filing of a petition for review in the United States Court of Appeals of appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Incorporation by reference of the State Implementation Plan for the States of Florida and South Carolina was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 1107 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7520))

Dated: December 2, 1981.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart K—Florida

1. Section 52.520 is amended by removing from paragraph (c)(18) the final sentence, dealing with conditional approval, and by adding paragraph (c)(30) as follows:

§ 52.520 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(30) Operating permit for Stauffer Chemical Company, submitted on August 4, 1980, by the Florida Department of Environmental Regulation, to satisfy a condition of the approval of the 1979 revisions for the Pinellas County SO₂ nonattainment area.

§ 52.528 [Amended]

2. In § 52.528, Control strategy; Sulfur oxides, paragraph (b), dealing with Part D conditional approval, is removed.

Subpart PP—South Carolina

3. In § 52.2120, is amended by adding paragraph (c)(13) as follows:

§ 52.2120 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(13) Changes in and supplements to 1979 implementation plan revisions for nonattainment areas, submitted on April 4, June 13, July 6, August 14, August 22, 1979, and on April 29, 1981, by the South Carolina Department of Health and Environmental Control. Included are a special operating permit for Macalloy Corporation and the following regulation changes:

- R. 62.5, Standard No. 5, Section II, revised definition of VOC (formerly located in R. 62.5, Standard No. 5, Section I, Part A);
- R. 62.5, Standard No. 5, Section II, revised VOC regulation-Petroleum liquid storage tanks (formerly R. 62.5, Standard 5, Section II, Part B);
- R. 62.1, Section I, revised definition of "fugitive dust";
- R. 62.5, Standard No. 5, Section I, Part E—VOC—Case-by-Case Exceptions;
- R. 62.5, Standard No. 1, Section I, Part C—VE—Special Provisions.

§ 52.2126 [Removed]

4. Section 52.2126 is removed.

[FR Doc. 81-35940 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52**[A-4-FRL 1993-2]**

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a State Implementation Plan (SIP) revision which the Tennessee Air Pollution Control Division submitted to satisfy a condition of EPA's August 13, 1980 (45 FR 53809) approval of the State's Part D revisions for the Nashville ozone plan. The revision consists of a regulation defining volatile organic compound (VOC) as a compound having a vapor pressure of 0.1 millimeter of mercury at standard conditions. This action will be effective February 16, 1982 unless notice is received on or before January 15, 1982, that someone wishes to submit adverse or critical comments.

EFFECTIVE DATE: February 16, 1982.

ADDRESSES: The Tennessee submittal may be examined during normal business hours at the following offices:

State of Tennessee, Department of Public Health, Cordell Hull Building, Nashville, Tennessee 37219
Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005
Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460
Library Environmental Protection Agency, Region IV, 345 Courtland Street N.E., Atlanta, Georgia 30365

FOR FURTHER INFORMATION CONTACT: Waymond A. Blackmon, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/881-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: After public hearing in conformity with 40 CFR 51.4, the Metropolitan Board of Health of Nashville-Davidson County, Tennessee on May 14, 1980, adopted a regulation which defines VOC as a compound having a vapor pressure at 0.1 millimeter of mercury at standard conditions. This action was necessitated by EPA's conditional approval of the carbon monoxide and ozone control plan for Nashville on August 13, 1980 (45 FR 53809). In the original Part D submittal, VOC was defined as a compound having a vapor pressure of 1.5 psia. Two conditions were required to be met which related to the definition of VOC and enforcement of a vehicle

inspection and maintenance (I/M) program. Today's action will remove the condition that dealt with the definition of VOC. The condition on I/M, requiring the submittal of an enforcement mechanism, remains.

The Control Techniques Guidelines (CTG's) published by EPA define a VOC as one having a vapor pressure of 0.1 millimeter of mercury at standard conditions. Two options were available to the State to remove the conditional approval for the VOC definition: (1) demonstrate that what they had adopted represented reasonably available control technology (RACT), or (2) adopt the definition as stipulated in the CTG's. They chose the latter. This will not interfere with reasonable further progress in attaining the National Ambient Air Quality Standards for ozone in the Nashville area.

Action: Accordingly, EPA is today approving the definition of VOC as a compound having a vapor pressure greater than 0.1 mm of mercury at standard conditions, submitted as an implementation plan revision by the State of Tennessee. The public should be advised that this action will be effective February 16, 1982. However, if notice is received on or before January 15, 1982 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of these revisions is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before February 16, 1982. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it merely ratifies requirements already in effect under State law, and has no significant economic impact.

Note.—Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110 and 172 of the Clean Air Act as Amended (42 U.S.C. 7410 and 7502))

Dated: December 8, 1981.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. Section 52.2220, is amended by adding paragraph (c)(43) as follows:

§ 52.2220 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

[43] Revision to the Volatile Organic Compound (VOC) definition, submitted on August 27, 1980, by the Tennessee Department of Public Health.

§ 52.2225 [Amended]

2. In § 52.2225, paragraph (c), dealing with conditional approval of the Part D ozone control strategy, is removed.

[FR Doc. 81-35929 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 81

[A5-FRL-1991-6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking revises the sulfur dioxide (SO₂) designation for portions of Marion County, Ohio from nonattainment to attainment, thus making all of Marion County attainment for SO₂.

This action will be effective February 16, 1982 unless notice is received on or before January 16, 1982 that someone wishes to submit adverse or critical comments.

DATE: This action is effective February 16, 1982.

ADDRESSES: Copies of the redesignation request and the supporting air quality are available at the following addresses: Regulatory Analysis Section, Air Programs Branch, Region V, U.S.

Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Ohio Environmental Protection Agency, 361 East Broad Street, Columbus, Ohio 43216.

Written comments on this action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio at the EPA Region V address above or call (312) 886-6088.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added Section 107(d) to the Clean Air Act (the Act). This section directed each State to submit to the Administrator of EPA a list of the NAAQS attainment status for all areas within the State. The Administrator was required to promulgate the State lists with any necessary Modifications. The Administrator published these lists in the Federal Register on March 3, 1978 (43 FR 8962), and made necessary amendments in the Federal Register on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

On October 5, 1978 (43 FR 46013), EPA designated the City of Marion and Marion Township as nonattainment for the primary SO₂ NAAQS. At that time, the remainder of Marion County was designated as attainment for SO₂. The nonattainment designation was based on a violation predicated in the RAM-Rural modeling analysis which was used to establish the SO₂ limits for this county. The modeling indicated that the predicted violation was due to the Huber Corporation which is located in Marion County.

On February 11, 1981, Ohio EPA requested EPA to redesignate Marion County to attainment for SO₂. On June 3, 1981, Ohio EPA submitted supplemental information for the redesignation. To support the redesignation request, Ohio EPA submitted all available SO₂ monitored data as well as revised updated stack parameters for the Huber Corporation. Additionally, Ohio EPA submitted a reference screening analysis for the nonattainment portion of Marion County using the corrected inventory. The results of the screening analyses indicate that EPA's basis for the original nonattainment designation is no longer valid and that the area is attainment for

SO₂. Further discussion of this analysis is contained in the technical support document which is available at Region V.

As additional support for the redesignation, Ohio EPA submitted all available SO₂ monitoring data collected in the nonattainment area. Although no violations of the primary and secondary standard have been measured, eight consecutive quarters of quality assured data are not available. Consequently, the redesignation is based solely on the remodeling analysis.

Therefore, EPA today is revising the SO₂ designation for portions of Marion County, Ohio from nonattainment to attainment, thus making all of Marion County attainment for SO₂. In order to facilitate rulemaking, this action will be effective February 16, 1982. However, if EPA is notified on or before January 15, 1982 that someone wishes to submit adverse or critical comments, this action will be withdrawn and a new rulemaking will propose the action and establish a comment period.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the present rule will not have a significant economic impact on a substantial number of small entities since it imposes no additional regulatory requirements.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it merely changes the designation of one area, and imposes no regulatory requirement on anyone.

Under section 307(b)(1) of the Clean Air Act, judicial review of these actions is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: December 8, 1981.

Anne M. Gorsuch,
Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Title 40 of the Code of Federal Regulations, Chapter 1, Part 81 is amended as follows:

§ 81.336 [Amended]

1. Section 81.336 is amended by removing all reference to Marion County in the Ohio-sulfur dioxide table.

[FR Doc. 81-35704 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 180

[PP 1F2482/R372; PH-FRL 2005-7]

Sodium Salt of Acifluorfen; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide, the sodium salt of acifluorfen and its metabolites in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for the combined residues of the sodium salt of acifluorfen and its metabolites in or on certain raw agricultural commodities was requested by the Rohm and Haas Company.

EFFECTIVE DATE: Effective on December 16, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3706, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the *Federal Register* of May 5, 1981 (46 FR 25137) which announced that the Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105, submitted a pesticide petition (PP 1F2482) proposing that 40 CFR 180.383 be amended by the establishment of tolerances for the combined residues of the herbicide, the sodium salt of acifluorfen (sodium salt of 5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoic acid) and its metabolites (the corresponding acid, methyl ester, and amino analogues in or on the raw agricultural commodities peanuts and peanut hulls at 0.1 part per million (ppm).

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data included plant residue, lactating cow, laying hen, and rat metabolism feeding studies; a rat acute oral LD₅₀ study with an LD₅₀ of 1.30 grams (g)/kilogram (kg) of body weight (bw); a 2-year rat feeding/

oncogenicity study negative for oncogenic effects at doses from 2.5 ppm to 1,080 ppm at varying time intervals, and acceptable as a chronic feeding study (with NOEL=90 ppm); a rat reproduction/teratology study with a no-observable-effect level (NOEL) of 540 ppm; a rabbit teratology study with a NOEL of 60 milligram/kilogram/day (mg/kg/day); a mouse oncogenicity study negative for oncogenic effects at 270 ppm; and a 2-year dog feeding study with a NOEL of 50 ppm.

Based on the 2-year dog feeding study with a NOEL of 50 ppm and a safety factor of 100, the acceptable daily intake (ADI) is 0.0125 mg/kg/day and the maximum permissible daily intake (MPI) is 0.75 mg/day for a 60-kg person. Previously established and pending tolerances utilize 2.06 percent of the ADI. Tolerances in or on the raw agricultural commodities soybeans at 0.1 ppm, and eggs, milk and meat products of animals at 0.02 ppm have been established.

There are no regulatory actions pending against the registration of this chemical. The metabolism of the sodium salt of acifluorfen in plants and animals is adequately understood and an analytical method (gas-liquid chromatography using an electron capture detector) is available for enforcement purposes.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is concluded that the tolerances for the sodium salt of acifluorfen residues in or on the raw agricultural commodities will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk at the address given above. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1104, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

Effective on: December 16, 1981.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: December 2, 1981.

Edwin L. Johnson,
Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.383 is amended by adding and alphabetically inserting the commodities peanuts and peanut hulls to read as follows:

§ 180.383 Sodium salt of acifluorfen; tolerances for residues.

Commodity	Part(s) per million (ppm)
Peanuts	0.1
Peanut, hulls	0.1

[FR Doc. 81-35015 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 261

[SW-FRL-1995-3]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Grant of temporary exclusions and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is today temporarily excluding solid wastes generated at several particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provisions of Parts 260 through 267 and

122 through 124 of the Resource Conservation and Recovery Act of 1976 and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "site-specific basis" from the hazardous waste list. The effect of this action is to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261.

DATE: Effective Date: December 16, 1981.

EPA will accept public comments on these temporary exclusions until February 16, 1982. Any person may request a hearing on these temporary exclusions by filing a request with John P. Lehman, whose address appears below, by January 8, 1982. The request must contain the information prescribed in 40 CFR 260.20(d) of this chapter.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Communications should identify the regulatory docket number "section 3001/Delisting Petitions."

Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460.

The public docket for these temporary exclusions is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information contact Messrs. Myles Morse or William Sproat, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C., (202) 755-9187.

SUPPLEMENTARY INFORMATION: On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and from specific sources. See 40 CFR 261.31 and 261.32. These wastes were listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (ignitability, corrosivity, reactivity and EP toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or 261.11(a)(3).

The Agency, however, recognizes that individual waste streams may vary

depending on raw materials, industrial processes and other factors. Thus, while a type of waste described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason, 40 CFR 260.20 and 260.22 provides an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. To be excluded, petitioners must show that the waste generated at their facilities does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and Background Documents for listed wastes.) Wastes which are "delisted" (i.e., excluded) may, however, still be hazardous if they exhibit any of the characteristics of a hazardous waste, and generators remain obligated to make this determination.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and (d)(2)). Again, the substantive standard for "delisting" is that the waste not meet any of the criteria for which it was listed originally. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent listed waste, or the waste mixture as a whole. (See 40 CFR 260.22(b).) Like other excluded wastes, these excluded treatment, storage or disposal residues remain subject to Subpart C of Part 261, and so may be hazardous if they exhibit any of the characteristics of hazardous waste.

EPA recognizes as well that there will be circumstances where immediate action on petitions is appropriate. Therefore, upon Agency review of a submitted petition, the Administrator may under 40 CFR 260.22(m) grant a temporary exclusion if there is substantial likelihood that a final exclusion ultimately will be granted.

It should be noted that the Agency has not run spot checks on the test data submitted to date in exclusion petitions. The Agency believes that the sworn affidavits submitted with each petition sufficiently bind the petitioner to ensure presentation of truthful and accurate test results. The Agency may, however, spot sample and analyze wastes or groundwater before a final decision is made whether to exclude any particular waste from the hazardous waste regulations.

Limited Effect of Federal Temporary Exclusion

The temporary exclusions granted today apply only to the Federal hazardous waste management system established under RCRA. States remain free to take any action they deem appropriate under their independent authority with regard to these wastes.

Some States have established their own provisions for delisting or excluding wastes from State control under their hazardous waste programs. Petitioners should consult with the State agencies to inquire about such provisions. EPA's action today of granting temporary exclusions is *not* an action on behalf of the States and does *not* affect control of the wastes by State programs.

The temporary exclusions granted today apply only in those situations where the waste is under Federal jurisdiction. EPA has granted some States interim authorization to operate their hazardous waste management programs in lieu of the Federal program. In the list of petitioners below, those States with interim authorization are indicated by an asterisk (*). In the case of an authorized State, Federal temporary exclusions have applicability only where the waste is transported to a non-authorized State, or is transported in interstate commerce; this includes intrastate transport by an interstate commerce carrier. In such situations where compliance with the Federal hazardous waste program is required, these wastes would be considered temporarily excluded from Federal regulatory control. However State and local control of the wastes remain unaffected by the Federal temporary exclusion.

The authorized programs in some States include delisting provisions which, as indicated in the State's Memorandum of Agreement (MOA), require EPA review and concurrence as a part of the State's delisting decisions. The Agency has reviewed the petitions from facilities in States within this category, and has indicated its concurrence by publishing today's temporary exclusions. In the list of petitioners below, the States within this category are indicated by a cross (†).

Petitioners

The temporary exclusions published today involve the following petitioners:

Penn-Dixie Steel Corporation, Kokomo, Indiana; John Deere Dubuque Works, Dubuque, Iowa*; Radford Army Ammunition Plant, Radford, Virginia*; Amoco Oil Company, Wood River,

Illinois; Pratt and Whitney Aircraft Group, West Palm Beach, Florida; American Nickeloid Company, Peru, Illinois; General Cable Company, Muncie, Indiana; Lehigh-Lancaster Incorporated, Lancaster, South Carolina; Chamberlain Manufacturing Corporation, Albia, Iowa; Gulf Oil Chemicals Company, Brooksville, Florida, Casper, Wyoming, Parish, Alabama; Hollowell (Columbus), Kansas; McLeansville, North Carolina; and Biwabik Minnesota; Bekaert Steel Wire Corporation, Van Buren, Arkansas; Plastene Supply Company, Portageville, Missouri; Kaiser Aluminum and Chemical Corporation, Spokane, Washington; Cooperweld Steel Company, Warren, Ohio; Tennessee Electroplating, Incorporated, Ripley, Tennessee; Liqwacon Corporation, York, Pennsylvania; Canton, Ohio, Thomaston, Connecticut, and Harvey, Illinois; Leggett and Platt Incorporated, Carthage, Missouri; Vulcan Materials Company, Port Edwards, Wisconsin; Sargent-Fletcher Company, El Monte, California; General Motors Corporation/Fisher Body Division, Columbus, Ohio; Eli Lilly and Company, Carolina, Puerto Rico and Eli Lilly Industries, Incorporated, Mayaguez, Puerto Rico; Olin Corporation, Charleston, Tennessee; Allied Chemical Corporation/Specialty Chemicals Division, Moundsville, West Virginia; and Western Electric, Kearny, New Jersey.

I. Penn-Dixie Steel Corporation

A. Petition for Exclusion

The Penn-Dixie Steel Corporation, involved in the manufacture of wire and wire products, has petitioned the Agency to exclude its sludge, formerly listed as EPA Hazardous Waste No. K063, (sludge from lime treatment of spent pickle liquor from steel finishing operations).¹ Penn-Dixie has petitioned to exclude its waste because it does not meet the criteria for which the waste was originally listed.

Penn-Dixie utilizes the processes of cold drawing and sulfuric acid pickling, sodium hydroxide degreasing and etching, flash hydrochloric acid contact and immersion in a solution of sulfuric acid, copper sulfate and water. The waste treatment process for the spent

pickle liquor involves lime neutralization to a pH range of 8-9 controlled by an automatic Taylor pH controller. The neutralized waste then flows into a clarifier/thickener for liquid/solids separation; the sludge flow is then routed for dewatering in either drying beds or a drum filter press. Penn-Dixie claims its sludge is environmentally stable and non-hazardous, and specifically that the sludge does not contain hazardous levels of hexavalent chromium and lead, the constituents of concern for which the spent pickle liquor (K062) is listed.

Penn-Dixie submitted a detailed description of its sludge treatment system, total constituent analyses for total chromium, hexavalent chromium and lead and EP toxicity test results for all of the toxic constituents specified in § 261.24 of the regulations. The samples were taken over approximately a four week period which the petitioner claims represents any variability of constituent concentrations in the waste. Total constituent analyses of the sludge revealed maximum total chromium, hexavalent chromium, and lead concentrations of 4.0, 1.0, and 2.6 ppm, respectively. EP toxicity test results involving total chromium and lead produced maximum leachate levels of .02 and .01 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern for this waste are hexavalent chromium and lead. EP extracts from the sludge samples analyzed by Penn-Dixie indicate lead and total chromium concentrations are consistently below the National Interim Primary Drinking Water Standards.² These low leachate levels indicate that the constituents are present in essentially an immobile form. A final pH of 8-9 indicates that Penn-Dixie's waste treatment process effectively neutralizes its spent pickle liquor wastes. The Agency therefore, has granted a temporary exclusion to the Penn-Dixie facility in Kokomo, Indiana for its treated spent pickle liquor, as described in its petition.

II. John Deere Dubuque Works

A. Petition for Exclusion

The John Deere Dubuque Works, (John Deere), a company manufacturing construction, utility, and forestry machinery, has petitioned the Agency to exclude its wastewater treatment

sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. John Deere has petitioned to exclude its sludge because it does not meet the criteria for which it was originally listed.

John Deere utilizes the processes of derusting and zinc and chromium electroplating in the production of construction, utility, and forestry machinery. John Deere claims that its waste treatment process is successful in generating a non-hazardous sludge with cadmium and chromium present at non-hazardous levels in the leachate; in addition, John Deere states that nickel and cyanides are not used in its electroplating processes.

John Deere has submitted a detailed description of its electroplating and wastewater treatment processes, total constituent analyses of their sludge for cadmium, total chromium, nickel and cyanide and EP toxicity test results for cadmium, total chromium, and nickel. Samples were obtained over a two-month period which the petitioner claims represents the uniformity of constituent concentrations in the waste.

John Deere's wastewater treatment system utilizes neutralization, chromium reduction, polymer flocculation, clarification, and dewatering. Constituent analyses of the final treatment sludge revealed maximum cadmium, total chromium, nickel and cyanide concentrations of 2.6, 116, 8.0 and <0.1 ppm, respectively. EP toxicity tests involving cadmium, total chromium, and nickel produced maximum leachate levels of 0.3, 0.35, and 0.75 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern for Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel and cyanide. In their petition, John Deere has demonstrated that its waste treatment system produces a non-hazardous sludge. John Deere claims that its production process does not use nickel or cyanide. Although low concentrations of nickel and cyanide are present in the waste, their occurrence probably results from unknown minor sources of contamination and background levels rather than from

¹ On November 12, 1980 (45 FR 74884), EPA removed waste K063 from the hazardous waste list (40 CFR 261.32). However, since these lime treatment sludges are generated from the treatment of a listed hazardous waste (K062), they still are considered to be a hazardous waste (40 CFR 261.3(c)(2)). Further, they remain hazardous wastes until they no longer meet any of the characteristics of hazardous wastes and are delisted (40 CFR 261.3(d)(2)).

² Hexavalent chromium is listed as the constituent of concern for this waste; however, since the concentration of total chromium is low the concentration of hexavalent chromium would also be low, so that analysis for hexavalent chromium is unnecessary.

direct use in the plating process. In addition, the EP extract concentration for nickel is not considered to be of regulatory concern.

With respect to the constituents cadmium and total chromium, the petitioner has submitted sufficient evidence to indicate that the concentration of cadmium, and total chromium³ in the EP extracts of the sludge were consistently well below the EP maximum level.⁴ These low leachate levels indicate that the constituents of concern are present in essentially an immobile form. The Agency, therefore, has granted a temporary exclusion to John Deere's Dubuque Works located in Dubuque, Iowa, for the waste generated by its electroplating process as described in its petition.

III. Radford Army Ammunition Plant

A. Petition for Exclusion

The Radford Army Ammunition Plant (RAAP), involved in the manufacture of trinitrotoluene (TNT), has petitioned the Agency to exclude its generated wastewater, presently listed as EPA Hazardous Waste No. K047 (Pink/red water from TNT operations). RAAP has petitioned to exclude its wastewater (red water) because it does not meet the criteria for which it was originally listed.

RAAP utilizes the processes of continuous nitration in the production of crude TNT. Purification of the crude TNT is carried out in a series of counter-current hot water and sodium sulfite (sellite) washes. From these selliting operations, red water is generated. RAAP claims that the red water generated by their continuous TNT process does not meet the characteristic of reactivity, the basis for listing this waste as hazardous.

The Radford Army Ammunition Plant has submitted a detailed analysis of its wastewater for the characteristic of reactivity. Samples were obtained over a three month period which the petitioner claims to be representative of any variation of the waste. From this analysis, the petitioner claims that the red water generated at RAAP is a stable chemical mixture that does not undergo violent change. Further, it does not react violently, form potentially explosive mixtures, or generate toxic gases, vapors or fumes, when mixed with water. Red water from RAAP also contains no cyanides or sulfide-bearing constituents.

In addition, it is not capable of detonation or explosive reaction when subjected to a strong initiating source or when heated under confinement. Finally, it is not capable of detonation or explosive decomposition or reaction at standard temperature and pressure, and it is not a forbidden explosive as defined in 49 CFR 173.51; a Class A explosive as defined in 49 CFR 173.53; or a Class B explosive as defined in 49 CFR 173.88. Therefore, RAAP claims that its pink/red water from TNT operations is non-hazardous.

The Radford Army Ammunition Plant was engaged in the continuous manufacture of TNT until the facility was damaged by a fire and explosion on May 31, 1974. Restoration of the facility is scheduled to be completed by April 1982 at which time the manufacture of TNT will resume. From January 1970 through May 1974, RAAP managed their red water by selling it to the Champion Paper Company of Canton, North Carolina. Red water is of economic value to the Champion Paper Company because of its high sodium sulfate content.

B. Agency Analysis and Action

EPA Hazardous Waste No. K047 is listed due to the reactivity of the pink/red water generated in the manufacture of TNT. The Radford Army Ammunition Plant has submitted evidence to indicate that the red water generated at their facility characterized by a percent solids of between 30 to 38 percent and a maximum nitroaromatics content of 12 percent, does not meet the characteristic of reactivity. The red water contains no cyanides or sulfides and therefore is not expected to generate toxic gases. Individual samples of red water failed to demonstrate an explosive reaction or detonation when subjected to initiation from No. 8 blasting caps. RAAP has stated that all red water generated will be transported off-site to the Champion Paper Company and will not be stored on-site or allowed to increase in solids or nitroaromatics content. EPA has therefore conditioned RAAP's temporary exclusion to apply only to red water generated from Radford which is maintained and transported as a wet material characterized by a percent solids of between 30 to 38 percent and a maximum nitroaromatics content of 12 percent. The Agency therefore, has granted a conditional temporary exclusion to the Radford Army Ammunition Plant in Radford, Virginia for the disposal of pink/red water as described in its petition.

C. Additional Data to be Submitted

The conditional temporary exclusion granted today is based on data supplied by RAAP from the manufacturing of TNT prior to May 31, 1974. Therefore, RAAP has been informed that when the manufacture of TNT resumes in April of 1982, additional test data must be submitted which characterizes the reactivity of the red water generated by the new facility.

IV. Amoco Oil Company/Wood River Refinery

A. Petition for Exclusion

The Amoco Oil Company (Amoco) involved in the refining of crude oil, has petitioned the Agency to exclude its dissolved air flotation sludge which has accumulated in lagoons 1 and 2 at its Wood River facility, which is presently listed as EPA Hazardous Waste No. K048—Dissolved air flotation (DAF) float from the petroleum refining industry. Amoco has petitioned to exclude this waste because it does not meet the criteria for which it was listed.⁵

Amoco's production processes involved desalting, primary distillation, catalytic cracking, alkylation, polymerization, reforming, blending of higher octane additives, selected products sulfur removal, and the production of lube additives. Treatment included initial oils separation, dissolved air flotation, cationic and anionic precipitation, aeration, aerobic digestion, clarification and belt filtration.

Amoco has submitted descriptions of their production and treatment processes, total constituent and EP leachate analyses of the wastes presently accumulated in sludge lagoons 1 and 2 for chromium and lead, a proposed disposal scenario involving incineration of the lagooned waste at the Metropolitan St. Louis Sewer District's (MSD) Lemay and Bissell Point treatment plants, and off-gas and ash analyses from preliminary trial burns at these facilities. Amoco claims that hexavalent chromium was not used as a corrosion inhibitor in its cooling towers, and thus would not be expected to appear in the waste. In addition, the petitioner claims that any lead present in the lagooned sludge is primarily lead sulfide, characterized by very low mobility causing it to remain in the ash after incineration.

⁵ Amoco has indicated that the refinery is no longer operational and that the petition applies to a fixed volume of waste presently lagooned at the facility (approximately 18 million gallons).

³ See footnote 2.

⁴ Although the maximum EP leachate concentration for cadmium approaches a level of some concern to the Agency, four additional samples were analyzed by the petitioner which indicate a low concentration of cadmium in the leachate (these samples ranged from 0.005 to 0.15 ppm).

Composited sludge samples were evaluated over a one month period by obtaining profile samples from the bottom, mid-depth and surface of the lagoons. Thirty samples were analyzed and are said to be representative of any variable concentration gradients of constituents present in the sludge. Constituent analyses of the sludge revealed maximum lead and total chromium concentrations of 620 and 10 ppm, respectively. EP toxicity test results involving lead and total chromium produced maximum leachate levels of <0.5 and <0.5 ppm, respectively.

Pilot runs combining 10 percent of Amoco's sludge with MSD's sewage sludge produced slack emissions for lead of 1.5 mg/m³ and a total particulate level of 0.077 grains/ft³.⁷ EP leachate analyses of the ash identified maximum lead and total chromium levels of <0.1 and <0.5 ppm, respectively.

B. Agency Action and Analysis

As is indicated by the data, the EP extracts of the sludge samples for both total chromium⁸ and lead, the constituents of concern for this waste, are consistently below the National Interim Primary Drinking Water Standards and, therefore, this waste would not appear to be of regulatory concern. However, since the petitioner is planning to incinerate the waste, the leachate data is not that relevant; rather the total constituent analysis of the waste is more germane in evaluating this petition. In evaluating this data, the Agency agrees that chromium does not appear to be used in the process; the low levels of this contaminant in the waste is probably a result of minor sources of contamination and background levels rather than from direct use. Therefore, the chromium levels in the waste do not appear to present a substantial hazard to human health and the environment when this waste is incinerated.

Lead, on the other hand, is used in the process and is in the waste in significant concentrations. This waste, therefore, if improperly incinerated may pose a substantial hazard to human health and the environment since lead will be released to the atmosphere through stack emissions. Thus, the Agency did not believe this waste should be delisted when incinerated. However, it appears that the Agency's concern regarding the

emissions of lead from the incinerator are eliminated since Missouri, the State in which the incinerator is located, has regulated this air pollutant through its State Implementation Plan (SIP). Under this plan, the State requires and actively monitors populated and industrial areas for compliance with the ambient air standard for lead. Consequently, the Agency believes that upon re-evaluation, this delisting petition can be granted when this waste is burned at the Lemay treatment plant since this facility provides the necessary assurance that the lead emissions from the incinerator will remain below levels of regulatory concern.⁹

The Agency is concerned that the delisting process not become a substitute for the statutory permitting procedures, and believes that Amoco's petition presents a close case. We are granting a temporary exclusion because Amoco has shown that the waste is not hazardous under realistically-occurring management options (as shown by EP results and trial burns), and, more importantly, because Missouri's SIP for lead, and the County's excellent monitoring coverage surrounding the Lemay incinerator provide independent regulatory assurance that the waste will not be incinerated improperly. EPA would not grant the petition if the incinerator were located in a State without a SIP for lead; if the vicinity of the incinerator was not sufficiently monitored; or if the waste contained significant concentrations of other RCRA constituents of concern not addressed by a SIP.

The Agency is however conditioning the exclusion to include no more than 10 percent of Amoco's sludge to be mixed with the MSD sludge. The Agency finds this limitation necessary since all test data submitted in Amoco's petition characterized only a 10 percent sludge mix.

The Agency is also encouraged and in part is basing its decision to delist the waste on the results from the test burn studies conducted on the incineration of this waste when mixed with MSD's sewage sludge. As indicated earlier, these results demonstrate that the Lemay incinerator is capable of using this waste as a supplemental fuel, and of burning it without exceeding any of the existing air standards. In addition, based on preliminary data, the

wastewater effluent quality, scrubber and sluice water quality do not appear to be affected by the burning of this waste; EP leachate concentrations of the incinerator ash also are well below the National Interim Primary Drinking Water Standards for both lead and hexavalent chromium. The Agency, therefore, has granted a temporary exclusion to the Amoco Oil Company's facility at Wood River, Illinois for its DAF sludge from lagoons 1 and 2, to be incinerated only at MSD's Lemay incinerator as described in this petition.

V. Pratt and Whitney and Aircraft Group

A. Petition for Exclusion

The Pratt and Whitney Aircraft Group, involved in the design, assembly, testing and overhauling of jet engines and their components for government aircraft has petitioned the Agency for the delisting of Hazardous Wastes:¹⁰

- F007—Spent cyanide plating bath solutions (except for precious metals electroplating spent cyanide plating bath solutions).
- F008—Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating bath sludges).
- F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions).
- P029—Copper cyanide.
- P030—Cyanide.
- P098—Potassium cyanide.
- P099—Potassium silver cyanide.
- P106—Sodium cyanide.

Pratt and Whitney has petitioned to exclude their waste because it does not meet the criteria for which it was originally listed.

Pratt and Whitney utilizes the processes of anodizing of aluminum and titanium alloys; hard chromium electroplating; acid nickel plating; copper, cadmium, silver and gold electroplating, and base metal cleaning, etching, chemical milling and stripping using acid, alkaline and selected cyanide solutions in the assembly and maintenance of jet engines. They claim that the cyanides present in the wastewater are effectively destroyed in

⁷Dispersion modelling indicates that even under worst case scenarios the ambient air standard for lead, 1.5 mg/m³, will not be exceeded. In addition, the particulate level is below 0.2 grains/ft³, the source performance standard for particulate emissions from sludge incinerators.

⁸See footnote 2.

⁹Amoco has also requested that they be able to burn this waste at the Bissell Point treatment plant. Although this facility is subject to Missouri's SIP for lead, the Agency believes that there is insufficient monitoring in the vicinity of the facility to assure compliance with Missouri's lead standard and, therefore, is not including the burning of this waste at the Bissell Point facility in the exclusion.

¹⁰In their petition, Pratt and Whitney requested that the Agency delist the treated effluent decanted from the electroplating treatment process and included this as Hazardous Waste No. F006. Upon evaluation, however, the Agency has determined that this waste stream is not a listed waste, since the listing applies to the sludge generated from the treatment of the raw wastewater, not to the wastewater itself. It should be noted that the petitioner considers their electroplating sludge hazardous and is presently managing it as a hazardous waste.

their wastewater treatment system rendering these waste streams non-hazardous.

Pratt and Whitney has submitted a detailed description of its waste treatment system and total cyanide analyses of the process wastewater. Pratt and Whitney utilizes a process of chlorine injection for the destruction of cyanides in their waste. Samples were collected over a two year period to sufficiently represent the uniformity of the constituent concentration in the waste. The maximum total concentration of cyanide in the wastewater is 0.02 mg/l.

B. Agency Analysis and Action

The hazardous waste constituent for which EPA Hazardous waste Nos. F007, F008, F009, P029, P030, P098, P099, and P106 are listed is cyanide. Pratt and Whitney has sufficiently demonstrated that its wastewater treatment system effectively destroys cyanides in the liquid waste and has shown that the waste does not exhibit the characteristic of reactivity i.e., the waste contains such small levels of cyanide that it would not generate toxic hydrogen cyanide in quantities sufficient to present harm to human health or the environment if improperly managed. The Agency, therefore, has granted a temporary exclusion to the Pratt and Whitney Aircraft Group, West Palm Beach, Florida for its treated electroplating wastewater as described in its petition.

VI. American Nickeloid Company

A. Petition for Exclusion

The American Nickeloid Company (ANC) involved in the manufacture of pre-plated metal sheet, coil and pre-finished vinyl-to-metal laminates has petitioned the Agency to exclude its wastewater treatment sludge presently listed for the following EPA Hazardous Wastes:

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum;

K063—Sludge from the lime treatment of spent pickle liquor from steel finishing operations.¹¹

ANC has petitioned to exclude its waste treatment residue because it does not meet the criteria for which the component wastes were initially listed.

ANC utilizes the processes of cleaning, pickling, brass and copper plating, polishing, and vinyl film lamination of metal sheets and coils. ANC has submitted a description of its production and wastewater treatment processes; total constituent analyses and EP toxicity test results of its generated sludge for cadmium, total chromium, nickel, cyanide and lead. The samples were taken from a twelve point sampling grid of the drying lagoon on June 23, 1981, containing sludge generated over a six-month period, which the petitioner claims to be representative of any variation of constituent concentration in the waste.

ANC's waste is generated as a result of (1) a cyanide destruction facility which oxidizes and precipitates copper, (2) zinc neutralization of pickling acid which precipitates iron oxides; (3) the reduction of hexavalent chromium to trivalent chromium and the subsequent precipitation of trivalent chromium oxide, (4) the precipitation of nickel oxide, and (5) the precipitation of suspended solids resulting from cleaners, cleaner rinses, and iron phosphating pretreatment. The cleaner precipitates contain soaps, emulsified oils and greases, and insoluble carbonates.

Total constituent analyses of the sludge produced maximum cadmium, total chromium, nickel, and lead levels of 20, 290, 1800, 200 ppm, respectively. A total cyanide analysis was also run with no discernible trace of cyanide detected. Extraction analyses produced maximum cadmium, total chromium, nickel, cyanide and lead concentrations of 0.20, 0.17, 5.65, 0.005 and 1.13 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern for which EPA Hazardous Waste Nos. F006 and K062 are listed are cadmium, hexavalent chromium, nickel, lead and cyanide. ANC has sufficiently demonstrated that its wastewater treatment sludge is non-hazardous. EP extracts show cadmium, total chromium,¹² and lead concentrations consistently well below the EP maximum level. The nickel leachate levels are well below 20 ppm, a level established by the Agency as an acceptable concentration of nickel in the EP extract (see 46 FR 40158, August 6, 1981) and, therefore, not of regulatory concern. These low leachate levels indicate that these constituents are present in essentially an immobile form. The low total cyanide concentration in the waste is also not of regulatory concern, and indicates that the cyanide

destruction system operates efficiently. A final pH of 9.5 indicates that ANC's waste treatment system effectively neutralizes its acid wastes. The Agency, therefore, has granted a temporary exclusion to the American Nickeloid Company's facility in Peru, Illinois for its wastewater treatment sludge as described in its petition.

VII. General Cable Company, Indiana Steel and Wire Division

A. Petition for Exclusion

The General Cable Company, Indiana Steel and Wire Division (General Cable) of Muncie, Indiana is involved in steel finishing operations. General Cable has petitioned the Agency to exclude its treatment sludge presently listed for the following EPA Hazardous Wastes:

K063—Sludge from lime treatment of spent pickle liquor from steel finishing operations.¹³

F008—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

General Cable has petitioned the Agency to exclude its waste because it does not meet the criteria for which it was originally listed.

The production processes at General Cable which generate the listed wastes are sulfuric acid pickling, muriatic acid pickling, lead fluoboric acid plating, and ammoniacal zinc chloride plating of steel wire. General Cable claims that cadmium, cyanides, nickel and chromium are not used in its electroplating process. Additionally, General Cable claims that its sludge is environmentally stable and non-hazardous and, therefore, does not contain hazardous levels of cadmium, hexavalent chromium, lead, nickel and cyanide, the constituents of concern for which the spent pickle liquor (K062) and wastewater treatment sludges from electroplating operations (F008) were listed.

General Cable has submitted a detailed description of its wastewater treatment system; total constituent analyses for cyanide, total chromium, lead, cadmium and nickel; and EP toxicity test results for total chromium, lead, cadmium and nickel. Samples were taken over a period of two weeks which General Cable claims represents the

¹¹See footnote 1.

¹²See footnote 2.

¹³See footnote 1.

uniformity of its manufacturing process and any variability of constituent concentrations in the waste.

General Cable's waste treatment process for its combined pickling and plating wastes involves lime neutralization, polymer flocculation, clarification and centrifuge dewatering. Total constituent analyses revealed maximum total chromium, lead, cadmium and nickel levels of 20, 2000, <10 and 20 ppm, respectively. EP toxicity test results of the dewatered sludge indicate maximum cadmium, total chromium, lead, and nickel concentrations of 0.2, 0.1, 0.12, and 0.2 ppm, respectively. Cyanides were not detected in the sludge.

B. Agency Analysis and Action

General Cable has demonstrated that its waste treatment system produces a non-hazardous sludge. General Cable first claims that its production process does not use cadmium, cyanide, chromium and nickel. This claim was substantiated in that although cadmium, total chromium, and nickel are found in the waste, the low concentrations present probably result from unknown minor sources of contamination and background levels, rather than from the direct use of these constituents in the process. In addition, cyanide was not detected in the waste confirming the petitioner's point.

The lead, cadmium and total chromium¹⁴ extract concentrations are also consistently well below the maximum EP toxicity levels. The EP extract levels for nickel are also below the level of regulatory concern. These low leachate levels indicate that the constituents are present in essentially an immobile form. A final pH of 9.0 indicates that General Cable's treatment process effectively neutralizes its spent pickle liquor wastes. The Agency therefore, has granted a temporary exclusion to General Cable Company, Indiana Steel and Wire Division of Muncie, Indiana for its treated wastes generated by its pickling and electroplating processes, as described in its petition.

VIII. Lehigh-Lancaster, Incorporated

A. Petition for Exclusion

Lehigh-Lancaster, Incorporated (Lehigh) located in Lancaster, South Carolina, involved in the manufacture of transmission towers and substation structures for the electrical utility industry, has petitioned the Agency to exclude its wastewater treatment sludge formerly listed as EPA Hazardous

Waste No. K062—sludge from line treatment of spent pickle liquor from steel finishing operations.¹⁵ Lehigh has petitioned to exclude its waste because it does not meet the criteria for which the waste was originally listed.

The production process at Lehigh which generates the listed waste is the cleaning of steel towers and substation structures prior to galvanizing. Lehigh's waste treatment process for spent pickle liquor involves lime neutralization, flocculation, sedimentation and filter press dewatering. Lehigh claims that its sludge is environmentally stable and non-hazardous and specifically that the sludge does not contain hazardous levels of hexavalent chromium and lead, the constituents of concern for which spent pickle liquor (K062) was listed.

Lehigh submitted a detailed description of its waste treatment system, and EP toxicity test results for lead and total chromium. Samples were taken over a period of four months which Lehigh claims represents the uniformity of its manufacturing production process and any variability of constituent concentrations in the waste. EP toxicity test results taken from the dewatered sludge revealed maximum lead and total chromium levels of 0.42 and 0.11 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern for this waste are hexavalent chromium and lead. EP extracts from sludge samples analyzed by Lehigh show lead and total chromium¹⁶ levels well below the maximum EP toxicity levels. These low leachate levels indicate that the constituents are present in essentially an immobile form. A final pH of 11.0 indicates that Lehigh's waste treatment process effectively neutralizes its spent pickle liquor wastes. The Agency, therefore, has granted a temporary exclusion to Lehigh-Lancaster, Inc., of Lancaster, South Carolina, as described in its petition.

As noted earlier, the publication of this temporary exclusion indicates the Agency's decision and concurrence with the State that this waste should be excluded from RCRA control.

IX. Chamberlain Manufacturing Corporation

A. Petition for Exclusion

Chamberlain manufacturing Corporation (Chamberlain) located in Albia, Iowa, a company involved in the manufacture of aluminum storm doors and windows has petitioned the Agency to exclude its wastewater treatment

sludge presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludge from the chemical conversion coating of aluminum. Chamberlain has petitioned to exclude its waste because it does not meet the criteria for which the waste was originally listed.

The production process which generates the listed hazardous waste is the chemical cleaning and coating of aluminum extrusions. The hazardous constituents of concern in this waste are hexavalent chromium and cyanide. Chamberlain has indicated that hexavalent chromium is used in the aluminum conversion coating process. However, they utilize sodium bisulfite to chemically reduce hexavalent chromium to its trivalent form. Chamberlain also claims that cyanides are not used in the process. Chamberlain, therefore, claims that the waste generated at this facility does not contain hazardous levels of hexavalent chromium and cyanide.

Chamberlain has submitted a detailed description of its wastewater treatment system. EP toxicity test results for both total and hexavalent chromium, and total constituent analyses for both complexed cyanide and free cyanide. Chamberlain's treatment system involves lime neutralization, clarification, and pressure filtration. EP toxicity test results of sludge samples indicate maximum total chromium and hexavalent chromium concentrations of 10 and <0.01 ppm, respectively. Total constituent analyses for total cyanide and free cyanide revealed concentrations of 10.0 and .007 ppm, respectively. Samples were taken over an eight week period which the petitioner claims to be representative of any variation of constituent concentrations in the waste.

B. Agency Analysis and Action

The chromium reduction treatment system used at the facility appears to efficiently reduce hexavalent chromium to trivalent chromium as indicated by the levels of hexavalent chromium in the leachate samples. Hexavalent chromium levels in the leachate were consistently well below the proposed maximum EP toxicity levels.¹⁷ These low leachate

¹⁴ See footnote 2.

¹⁵ See footnote 1.

¹⁶ See footnote 2.

¹⁷ On October 30, 1980, the Agency proposed to amend the characteristic of EP toxicity to measure for hexavalent chromium rather than total chromium. The Agency expects to finalize this proposal in the near future. In the meantime, the Agency is analyzing delisting petitions for which chromium is the constituent of concern by both assessing the concentration of total and hexavalent chromium in the waste extract. If the concentration of hexavalent chromium is relatively low, the Agency has decided to consider the concentration

levels indicate that hexavalent chromium is present in essentially an immobile form. In addition, the level of total and free cyanide found in the sludge is not considered of regulatory concern. Therefore, the Agency has granted a temporary exclusion to the Chamberlain Manufacturing Company of Albia, Iowa for its treated wastes from the chemical conversion coating of aluminum, as described in its petition.

X. Gulf Oil Chemicals Company

A. Petition for Exclusion

Gulf Oil Chemicals Company, (Gulf), involved in the manufacture of ammonium nitrate/fuel oil (ANFO) mixtures and water-gel explosives, has petitioned the Agency to delist its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. K044—wastewater treatment sludges from the manufacturing and processing of explosives. Gulf has petitioned to delist the sludge generated at six manufacturing facilities because it does not meet the criteria for which it was listed.

Gulf utilizes the processes of mixing ammonium nitrate prills with fuel oil for the production of ANFO mixtures and mixing aluminum, nitric acid, hexamine and other proprietary materials for the production of water-gel explosives. Wastewater is generated from the water used in wash-down operations of the manufacturing equipment. The wastewater treatment system utilized at these facilities includes evaporation ponds and tanks. Rinse water is routed to these ponds and allowed to evaporate, creating a sludge. Gulf claims that the sludges generated from their wastewater treatment processes do not meet the characteristic of reactivity, the basis for listing this waste as hazardous.

Gulf has submitted a description of its wastewater treatment system at each facility, and further submitted detailed analyses of the wastewater and sludge for the characteristic of reactivity. Samples were collected at each facility over a one month period which the petitioner claims to be representative of any variation in constituent concentration of the waste. From this analysis, Gulf claims that the sludge generated at the six facilities has been shown to be a stable chemical mixture that does not undergo violent changes. Further, it does not react violently, form potentially explosive mixtures, or generate toxic gases, vapors, or fumes when mixed with water. Sludge from these plants contain no cyanides or sulfide-bearing constituents, and so

cannot release toxic hydrogen cyanide or hydrogen sulfide gases. In addition, the sludge is said to be incapable of detonation or explosive reaction when subjected to strong initiating sources or when heated under confinement. The sludge also is incapable of detonation or explosive decomposition or reaction at standard temperature and pressures, and is not a forbidden explosive as defined in 49 CFR 173.51; a Class A explosive as defined in 49 CFR 173.53; or a class B explosive as defined in 49 CFR 173.88.

B. Agency Analysis and Action

EPA Hazardous Waste No. K044 is listed due to the reactivity of the wastewater treatment sludges generated in the manufacture of explosives. Gulf has submitted evidence from reactivity tests which indicate that the sludges generated at their six facilities for these manufacturing processes do not meet the characteristic of reactivity. For example, results from explosive temperature tests (43 FR 58962) indicate that this waste is a stable material. The Agency, therefore, has granted a temporary exclusion to Gulf Oil Chemicals Company facilities in Brooksville, Florida; Casper (Mills), Wyoming; Parish, Alabama; Hollowell (Columbus), Kansas; McLeansville, North Carolina and Biwabik, Minnesota for its wastewater treatment sludges, as described in its petition.

As noted earlier, the publication of this temporary exclusion indicates the Agency's decision and concurrence with the States of North Carolina and Alabama that these wastes should be excluded from RCRA control.

XI. Bekaert Steel Wire Corporation

A. Petition for Exclusion

The Bekaert Steel Wire Corporation (Bekaert) involved in the manufacture of steel wire has petitioned the Agency to exclude its sludge formerly listed as K063—sludge from lime treatment of spent pickle liquor from steel finishing operations generated at its facility in Van Buren, Arkansas.¹⁸ Bekaert has petitioned to exclude its waste because it does not meet the criteria for which the waste was originally listed.

Bekaert's manufacturing processes include hydrochloric acid pickling, lead annealing, and hot dip galvanizing. Its waste treatment process for spent pickle liquor includes lime neutralization, clarification, and pressure filtration. Bekaert claims their sludge is environmentally stable and non-hazardous, and specifically that the

sludge does not contain hazardous levels of hexavalent chromium and lead, the constituents of concern for which the spent pickle liquor (K062) is listed.

Bekaert has submitted a description of their sludge treatment system, and total constituent and EP leachate analyses for total chromium and lead. The waste samples were taken over approximately a three week period which the petitioner claims to be representative of any variation of constituent concentration in the waste. Total constituent analyses revealed maximum total chromium and lead concentrations of 290 and 22,000 ppm, respectively. EP toxicity test results reveal maximum total chromium and lead levels in the waste extract of <0.06 and <0.10 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern for this waste are hexavalent chromium and lead. EP extracts from sludge samples analyzed by Bekaert show lead and total chromium consistently well below the EP toxicity limits.¹⁹ These low leachate levels indicate that the constituents are present in essentially an immobile form. A final pH range of 8-9 indicates that Bekaert has successfully neutralized its acidic wastes. The Agency, therefore, has granted a temporary exclusion to the Bekaert Steel Wire Corporation in Van Buren, Arkansas for its sludge as described in its petition.

XII. Plastene Supply Company

A. Petition for Exclusion

The Plastene Supply Company (Plastene), located in Portageville, Missouri engages in electroplating of plastic parts. Plastene has petitioned the Agency to exclude its treatment sludge from EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Plastene has petitioned to delist its waste because it does not meet the criteria for which this waste was originally listed.

The production processes which generate the listed waste at Plastene include copper, nickel and chromium electroplating on plastic parts. The hazardous waste constituents of concern in this waste are cadmium,

¹⁸ of hexavalent chromium rather than total chromium in making a decision.

¹⁹ See footnote 1.

¹⁹ See footnote 2.

hexavalent chromium, nickel and cyanide. Plastene claims that it does not use cadmium or cyanide in its production process. Plastene also claims that its treated wastewater sludge is non-hazardous due to the effectiveness of its waste treatment system.

Plastene has submitted a detailed description of its waste treatment system; total constituent analyses for total chromium, nickel, cadmium and cyanide; and EP toxicity test results for hexavalent chromium, cadmium and nickel. Samples were obtained over a five month period which the petitioner claims represents the uniformity of its production process and constituent concentrations in the waste.

The treatment process involves pretreatment of the waste with sulfur dioxide and sulfuric acid to reduce hexavalent chromium to the trivalent state, lime and sodium hydroxide neutralization, polymer flocculation, clarification, and rotary vacuum filtration. Total constituent analyses revealed maximum total chromium, nickel, and cadmium concentrations of 95,000; 60,000; and 0.005 ppm, respectively. EP toxicity test results for nickel, hexavalent chromium and cadmium produced maximum leachate values of 17.18, 0.31, and <0.005 ppm, respectively. Total constituent analysis for cyanide showed no detectable cyanide.

B. Agency Analysis and Action

Plastene has demonstrated that its waste treatment system produces a non-hazardous sludge. Plastene claims that its production process does not use cadmium or cyanide; this claim was substantiated in that both cadmium and cyanide were not detected in the sludge. With respect to hexavalent chromium, although hexavalent chromium is used in the production process, it is present in the EP extracts at values well below the proposed maximum EP toxicity limits for this metal (see 45 FR 72031, October 30, 1980). Finally, the reported nickel leachate concentration is not considered to be of regulatory concern. These low leachate levels indicate that the constituents are present in essentially an immobile form. The Agency therefore, has granted a temporary exclusion to the Plastene Supply Company of Portageville, Missouri for its treated electroplating sludge as described in its petition.

XIII. Kaiser Aluminum and Chemical Corporation

A. Petition for Exclusion

Kaiser Aluminum and Chemical Corporation (Kaiser) located in

Spokane, Washington, involved in the production of aluminum coil, sheet and plate has petitioned the Agency to exclude its treatment sludge listed as EPA Hazardous Waste No. F019—Wastewater treatment sludge from the chemical conversion coating of aluminum. Kaiser has petitioned to exclude its waste because it does not meet the criteria for which the waste was originally listed.

The production process at Kaiser which generates the listed waste is the conversion coating of aluminum with chromic acid, hydrofluoric acid and phosphoric acid. Kaiser claims that since its aluminum chemical conversion coating process does not use cyanide, and that since the hexavalent chromium used in the process is reduced to its trivalent state in the waste treatment system, the wastes from this facility do not contain hazardous levels of cyanide or hexavalent chromium.

Kaiser has submitted a detailed description of its waste treatment process, total constituent analysis for cyanide and EP toxicity test results for hexavalent chromium. Samples were collected over a two month period which the petitioner claims to be representative of any variation of constituent concentrations in the waste.

The treatment process involves chromium reduction with sulfur dioxide and sulfuric acid, lime neutralization, clarification, and vacuum filtration. EP toxicity tests results indicate a maximum hexavalent chromium concentration of 0.08 ppm. Constituent analyses of the sludge for total cyanide revealed a maximum concentration of <0.8 ppm.

B. Agency Analysis and Action

Kaiser has demonstrated that its waste treatment system produces a non-hazardous sludge. Kaiser claims that its production process does not use cyanide. This claim was substantiated in that cyanide was found in the sludge at very low levels; its occurrence probably results from unknown minor sources of contamination and background levels, rather than from the direct use of cyanide in the plating process. With respect to hexavalent chromium, the chromium reduction treatment system used at the facility appears to efficiently reduce hexavalent chromium to trivalent chromium as indicated by the levels of hexavalent chromium in the leachate samples. Hexavalent chromium levels in the leachate were consistently below the proposed maximum EP toxicity limit (see 45 FR 72031, October 30, 1980). Therefore, the Agency has granted a temporary exclusion to Kaiser

Aluminum and Chemical Corporations facility in Spokane, Washington for its treated waste generated by its aluminum conversion coating process, as described in its petition.

XIV. Copperweld Steel Company

A. Petition for Exclusion

The Copperweld Steel Company (Copperweld) involved in the production of alloy steel bars, has petitioned the Agency to exclude its wastewater treatment sludge generated at its Warren, Ohio facility formerly listed as EPA Hazardous Waste No. K063—sludge from lime treatment of spent pickle liquor from steel finishing operations.²⁰ Copperweld has petitioned the Agency to exclude its waste because the waste does not meet the criteria for which it was originally listed.

Copperweld's production process includes sulfuric and hydrochloric acid pickling of steel. Copperweld claims that its sludge is environmentally stable and non-hazardous, and specifically that the waste does not contain hazardous levels of hexavalent chromium and lead, the constituents of concern for which spent pickle liquor (K062) is listed.

Copperweld has submitted a description of its waste treatment process; total constituent analyses for total chromium and lead and EP toxicity test results for total chromium, hexavalent chromium and lead. Samples were taken over a period of seven months which the petitioner claims to be representative of any variation of the constituent concentrations in the waste.

Copperweld's treatment process involves lime neutralization (to a pH of 9.0) and settling. Total constituent analyses for total chromium and lead show concentrations of 704 and 53 ppm, respectively. EP toxicity test results revealed maximum total chromium, hexavalent chromium and lead concentrations of 0.07, 0.05 and 0.29, respectively.

B. Agency Analysis and Action

The constituents of concern for this waste are hexavalent chromium and lead. EP toxicity test results from sludge samples analyzed by Copperweld show lead and hexavalent chromium well below the maximum and proposed maximum EP toxicity limits (see 45 FR 72031, October 30, 1980). These low leachate levels indicate that the constituents are present in essentially an immobile form. A final pH of 9.0 indicates that Copperweld's waste treatment process effectively neutralizes its spent pickle liquor wastes. The

²⁰ See footnote 1.

Agency, therefore, has granted a temporary exclusion to Copperweld Steel Company's Warren, Ohio facility for its treated spent pickle liquor, as described in its petition.

XV. Tennessee Electroplating, Inc.

A. Petition for Exclusion

Tennessee Electroplating Incorporated (Tennessee Electroplating) located in Ripley, Tennessee has petitioned the Agency to exclude its wastewater treatment sludge presently listed as EPA Hazardous Waste No. F006—

Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc-plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Tennessee Electroplating has petitioned to exclude its waste because it does not meet the criteria for which it was originally listed.

Tennessee Electroplating utilizes the processes of chromium, copper, nickel, and zinc electroplating of ceiling fans, hood ornaments and pay telephones. It claims that its wastewater treatment system produces a sludge which is environmentally stable and non-hazardous.

Tennessee Electroplating has submitted a description of its wastewater treatment process; total constituent analyses for total cyanide and total chromium, cadmium, and nickel; and EP toxicity test results for total chromium, cadmium, and nickel. The samples were taken over an eight month period which the petitioner claims is representative of any variation of constituent concentrations in the waste.

Tennessee Electroplating's wastewater treatment process involves the addition of sulfur dioxide and sulfuric acid for chromium reduction and the use of sodium hydroxide and chlorine gas for cyanide oxidation. Final treatment of all wastes involves neutralization (sodium hydroxide), precipitation, flocculation, clarification, and sludge filtration. Total constituent analyses of the sludge produced maximum total chromium, nickel, cadmium, and cyanide levels of 5000, 1000, <0.005 and <0.02 ppm. EP toxicity test results for total chromium, cadmium, and nickel showed maximum concentrations of 0.96, <0.005, and 17.4 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern for which EPA Hazardous Waste No. F006 is listed are cadmium, hexavalent chromium, nickel and cyanide. EP toxicity test results show total chromium concentrations consistently below the EP toxicity maximum levels.²¹ Cadmium was undetectable while nickel levels are also not of regulatory concern. These low leachate levels indicate that these constituents are present in essentially an immobile form. Total constituent analyses also show no detectable levels of cyanide. Thus, the Agency has granted a temporary exclusion to Tennessee Electroplating, Inc. of Ripley, Tennessee for its treated wastewater, as described in its petition.

As noted earlier, the publication of this temporary exclusion indicates the Agency's decision and concurrence with the State that this waste should be excluded from RCRA control.

XVI. Liqwacon Corporation

A. Petition for Exclusion

The Liqwacon Corporation (Liqwacon) operates several hazardous waste treatment facilities in the U.S. which utilize lime neutralization, sulfide precipitation, chromium reduction and cyanide destruction. Liqwacon has petitioned the Agency to exclude the treatment residue produced at its treatment facilities in York, Pennsylvania; Canton, Ohio; Thomaston, Connecticut; and Harvey, Illinois for the following EPA Hazardous Wastes:

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

F007—Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions).

F008—Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating bath sludges).

F009—Spent stripping and cleaning bath solutions from the process (except for precious metals electroplating spent stripping and cleaning bath solutions).

F011—Spent cyanide solutions from salt bath pot cleaning from metal heat-treating operations (except for precious metals

heat-treating spent cyanide solutions from salt bath pot cleaning).

F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges).

F015—Spent cyanide bath solutions from mineral metals recovery operations.²²

K062—Spent pickle liquor from steel finishing operations Liqwacon claims that the treatment residue produced at each facility from the treatment of these listed wastes is non-hazardous and environmentally stable since the hazardous constituents of concern are present in an immobile and nontoxic form. Liqwacon, therefore, claims that its treated wastes no longer meet the criteria for which they were originally listed.

Liqwacon has submitted a detailed description of its waste treatment systems, total constituent analyses and EP toxicity test results for nickel and the toxic metal constituents listed in 40 CFR 261.24 of the regulations, and test results on the reactivity of the treatment residue with respect to cyanide.

Liqwacon's "Envirite" process involves chromium reduction and cyanide destruction pretreatment operations. Hexavalent chromium is reduced to its trivalent state either by the addition of sulfur dioxide gas or a ferrous waste in acid solution. Cyanides are oxidized with sodium hypochlorite. Final treatment of the wastes involves lime neutralization, sulfide precipitation and vacuum filtration. The final pH of the sludge ranges from a pH of 8.1-8.9. Liqwacon's laboratories analyze all incoming wastes to assure that the wastes can be rendered non-hazardous by the treatment process.

EP toxicity test results for Liqwacon's facility in York, Pennsylvania have been submitted. Hexavalent chromium, nickel, cadmium and lead (the toxic metals constituents of concern), produced maximum leachate levels of <0.010, 1.08, 0.011 and 0.040 ppm, respectively. Samples were taken over a one month period which the petitioner claims to be representative of any variation in constituent concentrations in the waste. EP toxicity test results from the Thomaston, Connecticut facility revealed maximum hexavalent chromium, nickel, cadmium, and lead concentrations of 0.04, 3.0, 0.15, and <0.24 ppm respectively. Samples were collected over a one week period which the petitioner claims is representative of any variation in constituent concentrations in the waste. Maximum

²² The Agency has deleted this waste from the hazardous waste list due to the exclusion of solid waste from the extraction, beneficiation and processing of ores and minerals. (see 46 FR 76619, November 19, 1980).

²¹ See footnote 2.

total cyanide concentrations in the treatment residue from the Pennsylvania and Connecticut plants were 3.11 and 26.1 ppm, respectively. Maximum leachable cyanide concentrations were reported as 0.05 and 1.8 ppm from the York and Thomaston facilities, respectively.

Liquacon claims that the treatment system at its facilities in Canton, Ohio, and Harvey, Illinois although not presently on-line will be the same as those at its York, Pennsylvania and Thomaston facilities. Liquacon further claims that the wastes to be accepted at the Canton and Harvey facilities are the same types of wastes that are presently accepted at York and Thomaston, and therefore the extraction data and cyanide analyses are representative of the treatment residue which would be generated at the Canton and Harvey facilities.

In addition, Liquacon has proposed a contingency plan which would assure that the constituents in the treatment residue are consistently within an acceptable range. Liquacon has proposed to implement a program of batch monitoring of the treatment residue for each of the EP toxic metals. If concentrations of any of these constituents in the extract exceed 30 percent of the maximum EP toxicity limits, Liquacon will manage the waste as a hazardous waste in accordance with 40 CFR Parts 262 through 267.

B. Agency Analysis and Action

The Agency's function under RCRA includes the establishment of a national program to improve solid waste management and to promote environmentally sound hazardous waste treatment and disposal practices. Properly managed waste treatment plants could assume an important role in this process, particularly in view of the scarcity of hazardous waste disposal sites.

The Agency has reviewed the residue analyses and EP toxicity data submitted from Liquacon's Connecticut and Pennsylvania facilities. Liquacon's Illinois and Ohio facilities were not in operation when the petition to delist was submitted to the Agency. Liquacon, however, claims that its "Envirite" waste treatment process will also be utilized at these facilities, that data presented in its petition is representative of all four facilities and that the contingency plan presented will be used.

EP toxicity levels submitted by Liquacon for cadmium, hexavalent chromium, and lead are well below the maximum EP toxicity levels indicating that these constituents are present in a

relatively immobile form in the treatment residue. The nickel and leachable cyanide levels are also not of regulatory concern. Free cyanide concentrations on the other hand, were not determined in the treatment residue. The Agency considered denying the petitioners request due to the absence of free cyanide data. However, as indicated below, the Agency has set-up precautions to ensure that if high levels of free cyanide are present in the waste than the waste will not be delisted.

The Agency has accepted Liquacon's contingency plan with the following modifications: (1) Liquacon must submit total constituent analyses and EP toxicity test results for representative samples from its Illinois and Ohio plants once the facilities commence operations to ensure that the data submitted for the York and Thomaston plants are representative of the two new facilities. (2) The contingency plan will be implemented if the extract values for Cr+⁶ exceed 30 percent of the proposed maximum EP limit for hexavalent chromium (see 45 FR 72090-72031 (October 30, 1980) explaining the Agency's current policy regarding regulation of chromium containing wastes); (3) the contingency plan will be implemented if the extract values for nickel exceed 20 ppm (see 46 FR 40158 August 6, 1981); (4) the contingency plan will be implemented if the concentration of free cyanide exceeds 10 ppm in the treatment residue and if the leachate concentrations for cyanide exceed 2 ppm;²³ (5) The waste will be covered as a daily practice if the total cyanide concentration in the waste exceeds 10 ppm;²⁴ (6) The waste will be tested and analyzed for the parameters identified above, prior to disposal; and (7) any wastes triggering the implementation of the contingency plan will be handled as hazardous wastes subject to all appropriate regulations under 40 CFR Parts 262-267.

²³ The free cyanide level is based in part on the NIOSH air standard for cyanide while the extract level is based in part on the Public Health Services suggested drinking water standard.

²⁴ Due to the variable nature of total complexed cyanide in Liquacon's treatment residue, the Agency is concerned about the possible photodecomposition of higher levels of total cyanide present in the waste. The Agency has data indicating that complexed if exposed to sunlight may photodecompose to free cyanide. This is easily addressed by assuring that the waste is covered as a daily practice. At this time, the Agency has not been able to set a level at which complexed cyanide, if present in the waste, is considered non-hazardous. Therefore, as an interim measure, the Agency will require Liquacon to dispose of its treatment residue at a state permitted or registered landfill where the waste is covered as a daily practice, when total cyanide levels exceed 10 ppm.

The limitations indicated above are the result of negotiations between Liquacon and the Agency based substantially on Liquacon's original voluntary proposal and do not necessarily have precedential significance. The Agency believes it necessary to specify limitations on this process due to the variable nature of the incoming wastes. In addition, a safeguard is necessary in light of the high volume of toxic constituents in the incoming wastes and in the treatment residue and high volumes of sludge generated annually by Liquacon.

Thus, based on the EP toxicity data for the hazardous constituents of concern, the prescreening process and the contingency plan, the Agency is granting a conditional temporary exclusion to Liquacon's York, Pennsylvania; Thomaston, Connecticut; Harvey, Illinois; and Canton, Ohio facilities for the treatment residue generated from the treatment process as described in its petition.

XVII. Leggett & Platt, Inc.

A. Petition for Exclusion

Leggett & Platt, Inc. located in Carthage, Missouri, involved in the production of high and low carbon steel wire, has petitioned the Agency to exclude its residues generated from the treatment of EPA Hazardous Waste No. K062 (spent pickle liquor from steel finishing operations). Leggett & Platt has petitioned to exclude its waste because it does not meet the criteria for which it was originally listed.

Leggett & Platt utilizes the process of sulfuric acid pickling to clean high and low carbon steel rods to be drawn into wires. The waste treatment process of the spent pickle liquor involves anhydrous ammonia neutralization to a pH of 2.5. They claim that the treated spent pickle liquor is non-hazardous due to the effectiveness of their treatment system and specifically that the treated pickle liquor does not contain hazardous levels of hexavalent chromium and lead, the constituents of concern for which the spent pickle liquor (K062) is listed.

Leggett & Platt has submitted a detailed description of their waste treatment system and EP toxicity test results for hexavalent chromium and lead. Samples were obtained over a two month period which the petitioner claims represents the uniformity of constituent concentrations in the waste. EP toxicity test results revealed maximum hexavalent chromium and lead levels in the waste extracts of 0.098 and 0.018 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern for this waste are hexavalent chromium and lead. EP extracts from waste samples analyzed by Leggett & Platt show lead and hexavalent chromium levels consistently well below the maximum EP toxicity limits. These low leachate levels indicate that the constituents are present in essentially an immobile form. In addition, a final pH of 2.5 indicates that Leggett & Platt's waste management process treats its spent pickle liquor waste so that it no longer meets the corrosivity characteristic. The Agency, therefore, has granted a temporary exclusion to Leggett & Platt's facility in Carthage, Missouri, for its treated spent pickle liquor, as described in its petition.

XVIII. Vulcan Materials Company**A. Petition for Exclusion**

The Vulcan Materials Company, a company which produces chlorine and alkali, has petitioned the Agency to exclude its brine purification muds generated at its Port Edwards, Wisconsin facility, presently listed as EPA Hazardous Waste No. K071—brine purification muds from the mercury cell process in chlorine production, where separate prepurified brine is not used. Vulcan has petitioned to exclude this waste because it does not meet the criteria for which it was listed.

Vulcan's chlorine production process involves the processing of rock salt to make purified brine which is then electrolyzed in the cell system to form chlorine, caustic and hydrogen. Since the brine comes in contact with mercury in the cell system and is recirculated to the brine system for saturation and purification, some of the mercury exists from the brine system with the solid impurities. Vulcan claims however, that its treatment of these solid wastes renders them non-hazardous with respect to leachable mercury.

Vulcan has submitted a description of its production and treatment processes, total constituent and EP toxicity analyses of the waste for mercury, the constituent of concern for this waste, and a contingency plan which implements continuous testing of its wastes prior to disposal.

Vulcan's treatment process involves the addition of soda ash (Na_2CO_3) and sodium hydroxide to precipitate carbonates and hydroxides; clarification and filtration which separates this solid fraction is then sent to a purge pit. Calcium chloride is used to precipitate sulfides in a separate clarification step. All solids from the clarification, filter backwash, and sulfate control steps are collected in the purge pit. The waste is

then pumped to a surge tank for treatment with sulfuric acid (which converts CaCO_3 to CaSO_4). Sodium hypochlorite is then added to solubilize the mercury present in the waste. Rotary vacuum filtration removes solubilized mercury with the separated liquids. A water spray removes additional soluble mercury from the filter cake.

Total constituent analyses revealed maximum mercury concentrations of 4.3 ppm. EP leachate analyses after adaption of the cake wash system revealed maximum mercury concentrations of 0.094 ppm with an average value of 0.028 ppm. Samples were taken over a two month period which the petitioner claims is representative of any variations in constituent concentrations in the waste. Vulcan claims that its filter cake wash system reduces the leachable concentrations of mercury in its filter cake and saturator solids to non-hazardous levels. However, Vulcan has proposed to test each batch of the brine purification muds generated at its facility due to the variable nature of this waste. Vulcan will treat this waste solids filter cake as hazardous or re-treat this waste if the leachate analyses reveal mercury concentrations in excess of 0.05 ppm.

B. Agency Action and Analyses

The constituent of concern in EPA Hazardous Waste No. K071 is mercury. Due to the severe neurotoxic effects associated with exposure to low concentrations, the Agency is concerned about the possible variable nature of the mercury concentrations in the sludge and the high volumes of wastes being generated in Vulcan's process. The Agency believes that Vulcan has submitted data which indicates that the concentration of leachable mercury can be controlled by its treatment system. However, to assure that the leachable level of mercury is maintained at an acceptable level, the Agency has negotiated a contingency plan with Vulcan which will incorporate testing of each batch of filter cake and saturator solids prior to disposal. If EP analyses indicate that the leachate levels are in excess of 0.05 ppm then the waste will be treated as a hazardous waste and will be subject to the regulatory requirements of 40 CFR Parts 262-267.

Pursuant to this condition, the Agency therefore has granted a conditional temporary exclusion to the Vulcan Materials Company's facility in Port Edwards, Wisconsin for its brine purification muds, as described in its petition.

XIX. Sargent-Fletcher Company**A. Petition for Exclusion**

The Sargent-Fletcher Company, involved in the manufacture of airplane fuel tanks, has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.²⁵ Sargent-Fletcher has petitioned to exclude its waste because it does not meet the criteria for which it was originally listed.

The production process which will generate the waste at Sargent-Fletcher involves the chemical conversion coating of various aluminum parts. Sargent-Fletcher claims that the treated wastewater sludge that is generated is non-hazardous due to the effectiveness of its treatment system.

Sargent-Fletcher has submitted a description of its treatment process, EP toxicity test results for each of the constituents specified in 40 CFR 261.24 of the regulations, and total constituent analyses for total and free cyanide. Samples were taken over a two week period which the petitioner claims to be representative of any variation of the constituent concentrations in the waste. The waste treatment system utilizes the processes of electrochemical reduction, co-precipitation, clarification and pressure filtration. EP toxicity test results of the final treatment sludge revealed a maximum hexavalent chromium concentration of less than 0.05 ppm. Analysis for total cyanide and free cyanide produced maximum concentrations of 0.032 and 0.001 ppm, respectively.²⁶

B. Agency Analysis and Action

The hazardous waste constituents for which EPA Hazardous Waste No. F019 is listed are hexavalent chromium and cyanide (complexed). EP toxicity test results for hexavalent chromium are well below the proposed EP maximum toxicity level which indicates that hexavalent chromium is present in essentially an immobile form. In addition, the levels of total and free cyanide found in the sludge are not of regulatory concern.

Sargent-Fletcher has included data from their pilot plant waste treatment operation and has demonstrated that

²⁵ This petition is for a waste which is not now generated at the Sargent-Fletcher Co. but is expected to be generated in the near future.

²⁶ Analyses are based on four 55 gallon waste samples generated by Sargent-Fletcher and treated in a pilot scale plant at a rate of 7 gallons per minute.

this sludge is indeed non-hazardous. Sargent-Fletcher has claimed that the sludge to be generated at their El Monte, California facility, utilizing identical wastewater treatment processes, would also be non-hazardous. The Agency, therefore, has informed Sargent-Fletcher that once the wastewater treatment system becomes operational at their El Monte facility, they will be required to submit additional EP toxicity data to demonstrate that the generated sludge has similar leachability characteristics to that of the pilot plant analyses presented in its petition. The Agency has therefore granted a conditional temporary exclusion to Sargent-Fletcher's El Monte Facility for the treated wastes, as described in its petition.

XX. The General Motors Corporation

A. Petition for Exclusion

The General Motors Corporation, Fisher Body Division, involved in the manufacture of automobile body components, has petitioned the Agency to delist its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. General Motors has petitioned to exclude its sludge because it does not meet the criteria for which it was originally listed.

General Motors utilizes the processes of zinc and chromium electroplating in the production of automobile components. General Motors claims that cyanide is not used in its electroplating operations. In addition, they claim that their wastewater treatment process is successful in generating a non-hazardous sludge.

General Motors has submitted a detailed description of its waste treatment system, and total constituent analyses and EP toxicity test results for cadmium, chromium, (both total and hexavalent), nickel, and total cyanide. Samples were collected over a four week period which the petitioner claims to be representative of any variation of constituent concentrations in the waste.

General Motors utilizes the processes of neutralization, clarification and filtration in its waste treatment system. Total constituent analyses revealed

maximum cadmium, total chromium, hexavalent chromium, nickel and cyanide concentrations of 16.3, 2270, 22.2, 3160, and 1.7 ppm, respectively. EP toxicity test results for cadmium, hexavalent chromium, nickel and total cyanide produced maximum leachate concentrations of 0.13, 0.05, 0.32 and 0.4 ppm, respectively.

B. Agency Analysis and Action

The constituents for which EPA Hazardous Waste No. F006 are listed are cadmium, hexavalent chromium, nickel and cyanide. Although cyanide is present in General Motors' sludge, its occurrence probably results from unknown minor sources of contamination and background levels rather than from direct use in the production process and is not of regulatory concern. EP extracts from sludge samples analyzed by General Motors show that cadmium and hexavalent chromium levels are well below the maximum and proposed maximum EP toxicity levels (see 45 FR 72031, October 30, 1980). Nickel levels are also not of regulatory concern. These low leachate levels indicate that the constituents are present in essentially an immobile form. The Agency, therefore, has granted a temporary exclusion to the General Motors Corporation, Fisher Body Division of Columbus, Ohio, for its treated wastes, as described in its petition.

XXI. Eli Lilly and Company/Eli Lilly Industries, Inc.

A. Petition for Exclusion

Eli Lilly and Company (ELC) involved in the production of pharmaceutical chemicals has petitioned the Agency to exclude its biological treatment residue generated at its Mayaguez, and Carolina, Puerto Rico facilities. These residues derive from the treatment of the following EPA Hazardous Wastes:

F003—The following spent non-halogenated solvents: acetone, ethyl acetate, ethyl ether (Mayaguez facility), n-butyl alcohol, and methanol (Carolina facility) and the still bottoms from the recovery of these solvents;

F005—The following spent non-halogenated solvents: toluene (Mayaguez facility) and the still bottoms from toluene recovery.

ELC has petitioned to exclude these wastes because they do not meet the criteria for which they were listed.

ELC's Carolina facility has submitted a description of its wastewater treatment process, total constituent analyses for methanol and n-butyl alcohol and ignitability test results for its biological treatment residue. ELC's

Mayaguez facility has submitted a description of its wastewater treatment process, total constituent analyses for acetone, ethyl ether, ethyl acetate and toluene, and ignitability test results for its biological treatment residue.

At both facilities the distillation bottoms from solvent recovery are fed into the wastewater treatment system which involves neutralization, equalization, aerobic digestion, clarification, thickening, and vacuum filtration. Constituent analyses of samples from the aerobic digestion from the Carolina facility, using the headspace extraction methodology, revealed maximum total methanol and n-butyl alcohol concentrations of 1.2 and 0.6 ppm, respectively. Samples were taken over a three week period which the petitioner claims is representative of any variation of constituent concentrations in the waste. Ignitability tests using an open cup flash point tester on the Carolina facility samples, produced no flame or flash when heated over 90° C. ELC therefore claims that its treatment residue does not exhibit the characteristic of ignitability (40 CFR 261.21), the criteria for which EPA Hazardous Waste No. F003 is listed.

Constituent analyses of the filter cake from the Mayaguez facility, using the headspace extraction methodology, revealed maximum total acetone, ethyl ether, toluene and ethyl acetate concentrations of 0.45, 0.04, 0.04, and 0.10 ppm, respectively. Samples were obtained over a three week period which the petitioner claims to be representative of any variation of constituent concentrations in the waste. The petitioner claims that the filter cake is not capable of igniting as stated in the definition of the ignitability characteristic. ELC also claims that its treatment residue is non-toxic due to the presence of only negligible levels of toluene.

B. Agency Analysis and Action

EPA Hazardous Waste No. F003 is listed due to the ignitability of the spent non-halogenated solvents, of which methanol and n-butyl alcohol are used at ELC's Carolina facility and acetone, ethyl ether, and ethyl acetate are used at ELC's Mayaguez facility. Analyses for these constituents indicate that they are present in the treatment residue in only very low concentration (<1 ppm). Ignitability tests performed on both the Mayaguez and Carolina treatment residue also indicates the non-ignitable nature of the waste.

EPA Hazardous Waste No. F005 is listed due to ignitability and toxicity of the spent non-halogenated solvents. One

of these solvents, toluene, is used in ELC's Mayaguez facility. Analyses indicate only very low concentrations of toluene is present in the filter cake (0.04 ppm). This concentration is well below all known toxicity levels for the compounds. This filter cake is also non-ignitable as indicated above. The Agency therefore has granted temporary exclusions to Eli Lilly and Company and Eli Lilly Industries Inc. for their facilities in Carolina and Mayaguez, Puerto Rico for their biological treatment residue, as described in their petitions.

XXII. Olin Corporation

A. Petition for Exclusion

The Olin Corporation involved in chlor-alkali production, has petitioned the Agency to exclude its brine purification sludge generated at its Charleston, Tennessee facility, presently listed as EPA Hazardous Waste No. K071—brine purification muds from the mercury cell process in chlorine production where separate prepurified brine is not used. Olin has petitioned to exclude this waste because it does not meet the criteria for which it was originally listed.

Olin's chlor-alkali production process involves the preparation of a strong brine from rock salt, which then circulates through mercury cells where part of the dissolved sodium chloride is separated by electrolysis into chlorine and sodium. The chlorine is collected and processed into liquid chlorine; the sodium amalgamates with the mercury of the cell and is separated and decomposed to form sodium hydroxide. The weak brine leaves the cells, is dechlorinated and resaturated and purified. The purification (settling and filtration) of the resaturated brine produces brine muds which contain low levels of mercury carried over from the cells. Olin claims, however, that these mercury levels can be maintained at low levels through its brine drainage management system and therefore claims that the muds are non-hazardous.

Olin has submitted a description of its production and treatment processes, total constituent and EP toxicity analyses of the muds for mercury, the constituent of concern for this waste, and a contingency plan which implements continuous testing of the generated waste prior to disposal. Olin's muds are currently treated by removal of the muds from a collection pit, which are then deposited on a curbed apron for gravity dewatering. The liquid brine and dissolved mercury drains back into the pit which is then returned to the brine system.

Total constituent analyses of the brine muds revealed a maximum mercury concentration of 52.8 ppm, with an average concentration of 24.9 ppm. EP leachate analyses revealed a maximum mercury concentration of 0.09 ppm with an average concentration of 0.02 ppm. Samples were taken over a 7 month period which the petitioner claims is representative of any variation in constituent concentrations in the waste.

Olin has proposed to expand the dewatering and handling area to allow the muds to be deposited in numerous small uniformly sized piles in order to improve and standardize the dewatering function which, in turn, will produce muds of uniformly lower leaching potential. To aid in establishing this standardization and to assure a uniform and acceptable leachable mercury concentration from the muds, Olin has proposed to test samples from each batch prior to disposal using the EP toxicity test. Olin will treat these brine muds as hazardous or retreat the waste if the leachate analyses reveal a mercury concentration in excess of 0.05 ppm.

B. Agency Analysis and Action

The constituent of concern in EPA Hazardous Waste No. K071 is mercury. Due to the severe cumulative neurotoxic effects associated with exposure to low concentrations of mercury, the Agency is concerned about the variable nature of the mercury concentrations in the muds generated by Olin, and by the high volumes of waste being generated in Olin's process. The Agency believes that Olin has submitted data which indicates that the concentration of mercury can be controlled by its waste management system. However, to assure that the leachable level of mercury is maintained at an acceptable level, the Agency has negotiated a contingency plan with Olin which will incorporate composite testing of the dewatered waste prior to disposal. If the EP analyses indicate leachate levels in excess of 0.05 ppm then the waste will be handled as a hazardous waste and will be subject to the regulatory requirements of 40 CFR Parts 262-267. In light of this agreement, the Agency has granted a conditional temporary exclusion to Olin Corporation's facility in Charleston, Tennessee for its brine purification muds, as described in its petition.

As noted earlier, the publication of this temporary exclusion indicates the Agency's decision and concurrence with the State that this waste should be excluded from RCRA control.

XXIII. Allied Chemical Corporation / Specialty Chemicals Division

A. Petition for Exclusion

The Allied Chemical Corporation (Allied), involved in the production of organic chemicals, has petitioned the Agency to exclude its toluene diisocyanate residues generated at its Moundsville, West Virginia facility, presently listed as EPA Hazardous Waste No. K027—centrifuge and distillation residues from toluene diisocyanate (TDI) production. Allied has petitioned to exclude its waste because it does not meet the criteria for which it was originally listed.

Allied claims that its TDI residue is non-reactive since it is stored in piles in the open, where no exothermic reaction has occurred even when the piles are exposed to rainfall. Allied further claims that toluene 2,4-diamine (TDA) is present in the residue in only negligible amounts due to the consumptive nature of its TDI production process; and that TDI concentrations in the residue decrease rapidly due to the conversion of TDI to ureas. This conversion is described as a loss of carbon dioxide yielding an amine which reacts with the starting isocyanate, producing a poly-urea derivative. In addition, it is claimed that TDI readily hydrolyses in water, having a half-life of 0.5 seconds to 3 days. Allied therefore claims that the residue is non-hazardous due to its non-reactive nature and is non-toxic due to its low concentrations of TDA and TDI.

Allied currently transfers the TDI residue to an adjacent plant (LPC chemical) where it is used as a fuel in combination with coal.²⁷ The residue is burned to produce steam at LPC's facility which is then bought back by Allied. A mixture of 15% TDI residue and 85% coal is usually burned.

Allied has submitted analyses of the residue which was aged in the laboratory; analyses of waste pile samples (as generated), analyses of waste pile samples which were aged for 60 days (in the pile); emission analyses from the burning of coal and mixtures of coal and TDI residue; and a proposed waste management plan.

At the facility the TDI residue is dropped from the distillation stripper into a bin from which it is removed and placed on the storage pile within a few hours. The TDI content of the residue at that point is approximately 20-25% by weight as it leaves the distillation stripper. Laboratory analyses of the TDI

²⁷ Allied claims that the TDI residue has a demonstrated heat value of between 10,000-12,000 BTU's/lb.

residue indicates the TDI content is less than 10 ppm after aging in the laboratory for 67 days at a relative humidity of 80%. Additional tests on samples taken from the actual residue pile which were stored for 60 days were performed using a monochlorobenzene/gas chromatographic analytical methodology. Each sample analyzed revealed TDI concentrations less than 10 ppm. Older samples (stored 4 months to 1 year) revealed TDI concentrations of less than 1 ppm. Toluene 2,4-diamine concentrations from waste pile samples aged at least 60 days were less than 1 ppm. Analyses of the boiler exhaust gas from the stack revealed no differences in TDI or other priority pollutant concentration when 100% coal or mixtures of coal and TDI residue were burned.

As can be seen, the concentrations of TDI is not of regulatory concern only after some period of time where this compound undergoes a chemical reaction. Therefore, to assure that the concentration of TDI in the pile has degraded to an acceptable level, Allied has provided the Agency with a waste management plan which would involve separate open storage piles of the TDI residue which would be aged for a minimum of 60 days.

B. Agency Analysis and Action

EPA Hazardous Waste No. K027—centrifuge/distillation residues from TDI production, is listed due to its reactivity and due to the presence of the toxic contaminants toluene diisocyanate and toluene 2,4-diamine. Allied has demonstrated that because of the current method of storage of its TDI residues (i.e., storage in open piles) the problems of pressure generation and violent reactivity with water associated with drummed TDI wastes do not exist. Furthermore, Allied has shown that after being stored in waste piles for greater than 60 days, the concentration of TDI is very low (<10 ppm) and therefore is not of regulatory concern; the low levels of TDI present indicate that these compounds degrade while in the storage pile. The low TDA concentrations (<1 ppm) in the waste pile support Allied's claim that the TDA is consumed in the distillation process. In addition, TDI and TDA are not present in the waste in impactive concentrations, since test burns conducted by Allied indicate that concentrations of TDI and TDA in off-gases remain the same when coal and TDI residue mixtures are burned and when coal is burned alone.

The Agency remains concerned about the unknown rates of degradation of TDI in the residue and therefore has conditioned the delisting to those

wastes which have been stored in piles for greater than 60 days. The hazardous constituents clearly are not present in significant concentrations after this length of time. The waste can, moreover be burned safely at the end of this period. The Agency, therefore, has granted a conditional temporary exclusion to Allied Corporation's Moundsville, West Virginia facility for its TDI residues, as described in its petition.

XXIV. Western Electric

A. Petition for Exclusion

The Western Electric Company located in Kearny, New Jersey involved in the manufacture of metal printed wiring boards, has petitioned the Agency to exclude its sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Western Electric has petitioned to exclude its waste because it does not meet the criteria for which it was listed.

The production processes which generate this waste at Western Electric include copper, zinc, nickel, chrome, solder, gold and silver parts plating, and alkali and acid cleaning. The constituents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, cyanide and nickel. Although each of these constituents except cadmium are used in the production process, Western Electric claims that its treated wastewater sludge is non-hazardous due to the effectiveness of its treatment system.

Western Electric has submitted a description of its treatment process, total constituent analysis and EP toxicity test results for cadmium, total chromium, nickel, and cyanide. The samples were taken over a two month period which the petitioner claims to be representative of any variation in constituent concentrations in the waste.

Western Electric's waste treatment process includes sodium hydroxide neutralization, cyanide destruction via alkaline chlorination, chromium reduction via sulfur dioxide addition, flocculation using iron sulfate and an organic polymer, clarification and vacuum filtration. Total constituent analyses revealed maximum total

chromium, nickel and free cyanide concentrations of 30,000, 16,000 and <10 ppm, respectively. EP leachate test results indicate maximum cadmium, total chromium, nickel and cyanide concentrations of 0.02, 0.07, 26.5, and 0.14 ppm, respectively

B. Agency Analysis and Action

The constituents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel and cyanide. EP toxicity test results for cadmium are well below the EP maximum concentrations and therefore are not of regulatory concern.²⁸ EP extract levels for total chromium²⁹ are also consistently well below the EP maximum concentrations. These low leachate levels indicate that these constituents are present in essentially an immobile form. The low levels of free cyanide in the waste and low leachable cyanide levels are also not of regulatory concern, and indicate that the cyanide destruction system operates efficiently.

EP extracts, however, show nickel concentrations to be variable, periodically exceeding 20 ppm, a level established by the Agency as an acceptable concentration of nickel in the EP extract (see 46 FR 40158, August 8, 1981). The Agency is therefore requiring Western Electric to test each batch of their filter cake for leachable nickel concentrations using the EP toxicity test prior to disposal. The Agency has indicated to Western Electric that each batch of waste exceeding this acceptable leachate value (20 ppm nickel) is considered to be a hazardous waste and will remain subject to all the appropriate regulations under 40 CFR Parts 262-267. This contingency plan will remain in effect until such time that the data indicate, due to adjustments in the production or treatment process, that nickel leachate levels fall consistently below the 20 ppm value. In addition, since total cyanide concentrations in the waste have not yet been submitted, the Agency will require Western Electric to test each load of waste prior to disposal, for total cyanide. If the total cyanide content of the waste exceeds 10 ppm then the waste must be covered as a daily practice at a state approved or registered sanitary landfill.³⁰ The

²⁸ The petitioner claims that cadmium was not used in the process, but provided no analytical data to support their case (i.e., analysis of sludge for cadmium). However, since the concentration of cadmium in the EP extract is not considered to be of regulatory concern, the Agency has not asked the petitioner to provide any additional data.

²⁹ See footnote 2.

³⁰ Due to the possible variable nature of total complexed cyanide concentrations in Western

Agency has therefore granted a conditional temporary exclusion to Western Electric's Kearny, New Jersey, facility for its wastewater treatment sludge, as described in its petition.

XXV. Amendment to Temporary Exclusion Granted to Cerro Wire Company

On March 18, 1981, the Agency granted a temporary exclusion to the Cerro Wire Company of Syosset, New York, for its electroplating wastewater treatment sludge from EPA Hazardous Waste No. F008. The Agency has obtained additional test data, however, which indicates the possible occurrence of photodegradation of complexed cyanides in the treated sludge. To verify the additional test data which indicates high levels of free cyanide in Cerro Wire's waste which has been disposed since March 18, 1981, the Agency has requested Cerro Wire to test additional samples of the sludge for total and free cyanide. The sludge samples are to be taken from areas exposed at the surface of the disposal site and from lower depths which are not exposed to sunlight. In addition, the Agency has supplied Cerro Wire with a laboratory photodegradation test methodology which will be used to analyze representative samples of freshly generated sludge. This test will be used as an indicator to determine whether sunlight is the actual source of the increased levels of free cyanide in the waste.

In the interim, there is a relatively simple management method which can be adopted to assure that photodegradation of complexed cyanides does not occur, namely assuring that the waste is covered daily. EPA has therefore amended Cerro Wire's temporary exclusion to require disposal of the waste at a state approved or registered landfill where the waste is covered as a daily practice. In addition, depending upon confirmatory test data, the Agency may

Electric's treatment residue, the Agency is concerned about the possible photodecomposition of high levels of total cyanide which may be present in the waste. The Agency has data indicating that complexed cyanides if exposed to sunlight may photodecompose to free cyanides. This is easily addressed by assuring that the waste is covered as a daily practice. At this time, the Agency has not been able to set a level at which complexed cyanide, if present in the waste, is considered non-hazardous. Therefore, as an interim measure the Agency will require Western Electric to dispose of its treated waste at a state permitted or registered landfill where the waste is covered as a daily practice, when total cyanide levels exceed 10 ppm. Western Electric will be relieved of this contingency when sufficient data has been submitted to the Agency which indicates that only non-variable low levels of total cyanide are present in the waste.

require the waste disposed by Cerro Wire since March 18, 1981 to be removed from its present disposal site and either be retreated or disposed of as a hazardous waste. Further, since the additional data obtained by the Agency indicates a much greater variability in the free cyanide content of Cerro Wire's waste than that which was initially reported in Cerro's petition, the Agency has incorporated a contingency plan into Cerro Wire's temporary exclusion. The contingency plan requires the testing and analysis of each batch of waste prior to disposal, for free cyanide. If the free cyanide levels in the waste are found to exceed 10 ppm, then the waste will be handled as a hazardous waste. This free cyanide testing requirement will be eliminated when the Agency has sufficient data to characterize Cerro Wire's waste as a non-variable low free cyanide containing waste.

Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This grant of temporary exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's listed hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous eliminating the need for compliance with the hazardous waste regulations.

This amendment was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: December 9, 1981.

Christopher J. Capper,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 81-35643 Filed 12-15-81; 8:45 am]

BILLING CODE 8560-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

Limitation on Federal Participation for Capital Expenditures; Policy on Lack of Timely Notice

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This notice revises the Policy on Lack of Timely Notice under section 1122 of the Social Security Act, published in the Federal Register on January 26, 1977 (42 CFR Part 4847).

DATES: This revision to the Policy on Lack of Timely Notice is effective December 16, 1981, and will apply to each determination made by the Secretary under section 1122(d)(1) after that date.

FOR FURTHER INFORMATION CONTACT:

Libby Merrill, Director, Policy Coordination Staff, Bureau of Health Planning, 3700 East-West Highway, Room 6-22, Hyattsville, Maryland 20782, Telephone Number (301) 436-6870.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in a policy under section 1122 of the Social Security Act (42 U.S.C. 1320a-1) pursuant to which the Regional Health Administrators, under the authority of section 1122(d)(1) (previously delegated to them by the Secretary), will limit the period of withholding of reimbursement for a capital expenditure when it has been determined under section 1122(d)(1)(A) that timely notice of a proposed capital expenditure subject to review under section 1122 has not been provided as required.

This policy had been developed in response to reports of an increasing number of cases in which capital expenditures subject to review under section 1122 have not been submitted for review to the designated planning agency in the timely manner required by the statute and regulations. The circumstances surrounding the history of these cases are varied, and, while some cases apparently merit the withholding of all reimbursement, others do not.

The law and regulations provide two procedures for limiting the requirement to withhold all reimbursement related to the capital expenditure in cases where timely notice was not provided. One is to use the mechanism provided by section 1122(d)(2) whereby the Regional Health Administrators (to whom that authority is presently delegated) could decide not to withhold reimbursement on the grounds cited in the law and regulations, after submitting the matter to the appropriate national advisory council. This mechanism, however, offers serious disadvantages (among them, complexity, lack of flexibility, and lack of timeliness), and therefore has been rejected as the general procedure to be used in these cases.

The second alternative is that provided by the language of section 1122(d)(1):

*** if the Secretary determines that—(A) neither the planning agency designated in the agreement described in subsection (b) nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; *** then for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under titles XVIII and XIX with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure (Italics added).

This language requires the Regional Health Administrator to determine the appropriate period of withholding in each case. Under the Policy on Lack of Timely Notice, as published in the Federal Register on January 26, 1977 (42 FR 4847), there are two circumstances in which the Secretary will not withhold reimbursement in spite of a finding by the Secretary that a facility failed to submit a timely application to the designated planning agency. First, paragraph one of the Policy on Lack of Timely Notice provides that reimbursement will not be excluded when the Secretary determines that a reasonable effort had been made to determine from the designated planning agency whether the expenditure was reviewable and that the designated planning agency had not informed the facility within a reasonable time that the proposed expenditure was subject to review. Paragraph three identifies the other circumstance in which the Secretary will not exclude reimbursement. To meet the requirements of this paragraph, the facility must show that (1) the filing of a timely application would have placed in jeopardy the health or the safety of the patients of the facility, (2) the facility submitted a complete application to the designated planning agency within a specified period of time, and (3) the designated planning agency submitted a finding to the Secretary that the expenditure is consistent with applicable plans, criteria, and standards.

The Secretary has concluded that it is more appropriate for the designated planning agency to determine the circumstances under which reimbursement will not be withheld when a facility failed to submit a timely application, but whose application the agency has concluded is consistent with

the applicable plans, criteria, and standards.

For this reason, the Secretary is revising paragraph three of the Policy on Lack of Timely Notice to provide that the Secretary will not withhold reimbursement under section 1122 with regard to a capital expenditure when the designated planning agency (1) makes a finding that the expenditure is consistent with the applicable plans, criteria, and standards and (2) recommends that no reimbursement be withheld from the facility. The Secretary expects that included in the instances in which a designated planning agency will recommend reimbursement are those emergencies covered under the former paragraph three.

The Secretary will apply this revised policy to initial and reconsidered determinations made after December 16, 1981. The revised policy follows:

Note.—Where the Secretary makes the determination described in 42 CFR 100.108(a)(1), he will follow the following policy in establishing the time period during which reimbursement will be withheld:

(1) Where the health care facility by or on behalf of which the expenditure was made demonstrates to the satisfaction of the Secretary that a reasonable effort had been made to determine from the designated planning agency whether the expenditure was subject to review, and the designated planning agency had not informed the facility within a reasonable period of time that the proposed expenditure was subject to review, the Secretary will not withhold reimbursement related to the capital expenditure.

(2) Where the designated planning agency has, in accordance with the requirements of section 1122 of the Act and its regulations (42 CFR Part 100), submitted to the Secretary its finding that such expenditure is not consistent with the standards, criteria, or plans described in § 100.104(a)(2) of the regulations, and where subparagraph (1) above is not applicable, the Secretary will withhold all reimbursement related to the capital expenditure: *Provided*, That where the designated planning agency, in accordance with § 100.109(c), submits to the Secretary a revised finding in accordance with paragraph (c)(2) of that section, the Secretary will apply the provisions of subparagraph (3) or subparagraph (4) below, whichever is applicable.

(3) Where the designated planning agency makes a finding that the capital expenditure is consistent with the standards, criteria, and plans and recommends to the Secretary that no withholding of reimbursement occur, the Secretary will not withhold reimbursement related to the capital expenditure.

(4) Where the designated planning agency submits to the Secretary its finding that the capital expenditure is consistent with the standards, criteria, and plans described in § 100.104(a)(2) which apply at the time of the review by the designated planning agency, but the provisions of neither subparagraph (1)

nor subparagraph (3) above apply, the Secretary will withhold reimbursement related to the capital expenditure for a period of one year.

Dated: December 7, 1981.

Robert Graham,

Acting Administrator, Health Resources Administration.

[FR Doc. 81-35678 Filed 12-15-81; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-175; RM-3760]

TV Broadcast Station in Arcata and Eureka, California; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF TV Channel 23 to Arcata, California, in response to a petition filed by Pentreed, Ltd. The assignment could provide Arcata with a first local television service.

DATE: Effective February 5, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Report and Order

(Proceeding Terminated)

Adopted: December 2, 1981.

Released: December 9, 1981.

In the Matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Arcata and Eureka, California) BC Docket No. 81-175 RM-3760.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 46 F. R. 19267, published March 30, 1981, proposing the assignment of UHF television Channel 23 to either Arcata or Eureka, California, in the alternative, in response to a petition filed by Pentreed, Ltd. ("petitioner"). Supporting comments were filed by petitioner in which it reaffirmed its intent to apply for the channel, if assigned. No oppositions to the proposal were filed.

2. Arcata (population 12,338),¹ in Humboldt County (population 108,024),

¹ Population figures are extracted from the 1980 U.S. Census. Advance Reports.

coast, approximately 12 kilometers (7.3 miles) north of Eureka, California (population 24,153). It has no local television service.

3. In the *Notice*, we questioned which city the proposed channel would actually serve, given the proximity of the two communities, and requested petitioner to address this point in supporting comments. We also noted that should the channel ultimately be assigned to Eureka, the larger of the two communities, it could be applied for at Arcata under the provisions of § 73.607(b), the "15-mile" rule.

4. Petitioner asserts that Arcata, the second largest city in Humboldt County, has demonstrated a pattern of steady growth over the past decade, noting its current population represents an increase of 50% during that period. According to petitioner, Arcata also has its own separate identity from Eureka, and enjoys a wide diversity of economic interests. Further, it adds that Arcata is capable of supporting its own television station without depending on the Eureka market as a source of revenue. It reports that Arcata's taxable retail sales in 1976 were 40,878,000, which, it states, represents an increase of 100% from the 1970 total of \$17,515,000.

5. Petitioner concludes that even if the channel is assigned to Eureka, it will apply for authority to construct and operate a station at Arcata, pursuant to § 73.607(b).

6. Generally, the Commission's policy has been to assign a television channel to the larger community, and allow interested parties to apply for it at the suburban community under the 15-mile rule. *See, Oklahoma City, Oklahoma*, 44 FR 67664, published November 27, 1979. However, after a careful review of the record, we have determined that in consideration of the steadily increasing population of Arcata, and the showing of its economic independence, the public interest would be served by making the requested assignment to Arcata. Such an assignment would provide the community with its first local television outlet to serve its district needs, interests and issues. Unlike other cases in which we have assigned a requested channel to the larger community rather than to a suburb, the difference in the population of Arcata and Eureka (a ratio of 2:1) is not as great as the other cases. *See, Oklahoma City, Oklahoma, supra*, and *Sanger, Clovis and Fresno*

California, 46 FR 23748, published April 28, 1981. Additionally, no interest or showing of need for additional service to Eureka was demonstrated.

7. The assignment can be made to Arcata consistent with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

8. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules, it is ordered, That effective February 5, 1982, the Television Table of Assignments, § 73.606(b) of the Rules, IS AMENDED, as follows:

City	Channel No.
Arcata, California	23

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division
Broadcast Bureau.

[FR Doc. 81-35847 Filed 12-15-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-283; RM-3713]

TV Broadcast Station in Roanoke, Virginia; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 38 to Roanoke, Virginia, in response to a petition filed by Vine and Branch, Inc. The assignment could provide Roanoke with its fourth commercial television service.

DATE: Effective February 5, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Report and Order

(Proceeding Terminated)

Adopted: November 24, 1981.

Released: December 9, 1981.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, Roanoke, Virginia, BC Docket No. 81-283 RM-3713.

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 46 FR 25487, published May 7, 1981, proposing the assignment of UHF television Channel 38 to Roanoke, Virginia, as its fourth commercial television assignment. The *Notice* was issued in response to a petition filed by Vine and Branch, Inc. ("petitioner"). Supporting comments were filed by the petitioner. No oppositions to the proposal were received.

2. Roanoke (population 92,115)¹ is located in the western portion of Virginia, approximately 217 kilometers (135 miles) west of Richmond, Virginia. It currently has the following television assignments: Channel 7 (WDBJ-TV), Channel 10 (WSLS-TV), Channel *15 (WBRA-TV), and Channel 27 (two applications pending).

3. In its comments, petitioner again urged the Commission to adopt the proposal to assign Channel 38 to Roanoke, Virginia, and reiterated its intent to apply for the channel, if assigned.

4. After careful consideration of the proposal and comments, we believe that the public interest would be served by assigning Channel 38 to Roanoke. Petitioner has shown that there is an apparent need for a fourth television service to that community. The transmitter site is restricted to 10 kilometers (6.3 miles) northwest of the city in order to meet the spacing requirements.

5. Accordingly, pursuant to authority contained in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules, it is ordered, That effective February 5, 1982, the Television Table of Assignments (Section 73.606(b) of the Commission's Rules) is amended

¹ Population figures are taken from the 1980 U.S. Census.

with respect to the community listed below:

City	Channel No.
Rosnoke, Virginia	7-, 10, *15+, 27+, 38-

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1966, 1982; 47 U.S.C. 154, 303)

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division
Broadcast Bureau.

[FR Doc. 81-35848 Filed 12-15-81; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 46, No. 241

Wednesday, December 16, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1904 and 1944

[FmHA Instruction 1944-J]

Section 504 Rural Housing Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise and renumber its regulations regarding making loans and grants to very low-income rural homeowners for home repairs. The current regulation is being revised because it is a supplement to an existing FmHA Instruction, and as such is inadequate to address the needs of making and servicing Section 504 loans and grants. The intended effect of this revision is to establish uniform standards of eligibility, especially with regard to income, to permit the Section 504 program to be administered independently of the Agency's Section 502 housing program, and to prevent program abuse by providing more specific guidelines for processing and servicing Section 504 loans and grants.

DATE: Comments must be received on or before February 16, 1982.

ADDRESS: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Nancy S. Monesson, Loan Specialist, Single Family Housing, Farmers Home Administration, Room 5341, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone: (202) 382-1481.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291 and has been designated as a "non-major rule."

There is no impact on proposed budget levels and funding allocation will not be affected because of this action. We have determined that this regulation maximizes the benefit to society at the lowest net cost. The changes made will provide accountability of use of funds and assure the recipients of value received for monies spent, thereby preventing abuse of the program which has proved costly to the Government.

This regulation does not directly affect any FmHA programs or projects which are subject to A-95 clearinghouse review.

The Catalog of Federal Domestic Assistance program affected is: 10.417, Very Low-Income Housing Repair Loans and Grants.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

This action is needed to facilitate and improve the services provided by the Section 504 program. The only alternative action considered was to make no change in the existing regulation, which is inadequate to administer the program effectively.

The proposed revision will provide specific criteria for determining eligibility by establishing a maximum adjusted income limit of 50 percent of that amount set forth as low income in Exhibit C, Subpart A, Part 1822 of this Chapter. It also will provide specific requirements for processing and servicing Section 504 loans and grants, including a requirement that bids from builders or contractors provide complete dollar breakdown of costs of materials and labor for each item for development, and instruction on handling unused funds and improper loans and grants. The proposed revision will result in a regulation for Section 504 loans and

grants that is independent of rather than a supplement to the Agency's regulation for Section 502 Rural Housing Loan Policies, Procedures and Authorizations.

As proposed, Subpart G, consisting of §§ 1904.301 through 1904.313, of Part 1904, Chapter XVIII, Title 7, Code of Federal Regulations, is revised and redesignated as Subpart J of Part 1944 and reads as follows:

PART 1904—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

§ 1904.301 through 1904.313 [Revised and redesignated as Subpart J of Part 1944]

PART 1944—HOUSING

Subpart J—Section 504 Rural Housing Loans and Grants

Sec.

- 1944.451 General.
 - 1944.452 Nondiscrimination.
 - 1944.453 Definitions.
 - 1944.454-1944.455 [Reserved]
 - 1944.456 Loan and grant purposes.
 - 1944.457 Loan and grant restrictions.
 - 1944.458 Eligibility requirements.
 - 1944.459-1944.460 [Reserved]
 - 1944.461 Security.
 - 1944.462 Rates and terms.
 - 1944.463 Technical services.
 - 1944.464 Insurance requirements.
 - 1944.465-1944.466 [Reserved]
 - 1944.467 Processing applications.
 - 1944.468 Loan or grant approval.
 - 1944.469 Loan and/or grant closing.
 - 1944.470-1944.471 [Reserved]
 - 1944.472 Subsequent Section 504 loans and/or grants.
 - 1944.473 Improper loans and/or grants.
 - 1944.474-1944.500 [Reserved]
 - Exhibit A—Agreement—Section 504 Grant
 - Exhibit B—Solicitation of Bids.
- Authority:** 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart J—Section 504 Rural Housing Loans and Grants

§ 1944.451 General.

This Subpart sets forth the policies and procedures and delegates authority for making initial and subsequent Rural Housing (RH) loans and/or grants to individuals under Section 504(a) of Title V of the Housing Act of 1949, as amended. The objective of the Farmers Home Administration (FmHA) in making Section 504 loans and grants is to assist very low income owner-occupants in rural areas, who do not qualify for Section 502 loans, to repair or

improve their dwellings. Those repairs will result in the removal of health or safety hazards, thereby making the dwellings safe and sanitary for the occupants, their families, and the community.

§ 1944.452 Nondiscrimination.

It is FmHA policy that assistance and services will not be denied to any person based on race, sex, national origin, color, religion, marital status, age, handicap (provided the applicant possesses the capacity to enter into a legally binding contract), receipt of income from public assistance, or because an applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. This policy complies with Regulation B issued under the Equal Credit Opportunity Act (ECOA).

§ 1944.453 Definitions.

(a) *Adjusted annual income.* Annual income as defined in paragraph (b) of this section, less 5 percent, and less an additional \$300 for each dependent minor child (excluding the applicant, co-applicant, and foster children) who is a member of the household.

(b) *Annual income.* Planned income to be received during the next 12 months by the applicant, co-applicant, and all other adults who are living or propose to live in the dwelling to be repaired.

(c) *Co-signer.* A party who joins in the execution of the Promissory Note to guarantee repayment by the borrower. The co-signer becomes jointly and severally liable to comply with the terms of the note in the event of the borrower's default.

(d) *County Supervisor.* Includes Assistant County Supervisor for all duties and responsibilities which are included in the employee's job description and for authorizations which have been delegated in writing in accordance with FmHA Instruction 2006-F (available in the National Office and any FmHA State or County Office). For the areas of Alaska and the Western Pacific Territories, it also includes the Area Supervisor.

(e) *Elderly.* For the purposes of this Subpart, the term "elderly" refers to a person 62 years of age or older.

(f) *Owner.* For the purposes of this Subpart, an owner is one who can present acceptable evidence of ownership in accordance with § 1944.458(a)(1).

(g) *Rural area.* A determination of rural area will be in accordance with § 1822.3 of this chapter (paragraph III of FmHA Instruction 444.1).

(h) *Sub-standard dwelling.* A dwelling which does not meet Minimum Property

Standards (MPS) or FmHA thermal standards as required by Subpart A of Part 1924 of this Chapter.

(i) *Very low income.* An adjusted annual income that does not exceed 50 percent of the amount established as low income in Exhibit C, Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1) for each designated area.

§§ 1944.454-1944.455 [Reserved]

§ 1944.456 Loan and grant purposes.

Section 504 loan and grant funds may be used only to pay costs for repairs and improvements which will result in removal of identified safety and/or health hazards. Dwellings repaired with section 504 loan or grant funds need not be brought to MPS or FmHA thermal standards, nor must all of the existing hazards be removed provided the dwelling does not continue to have major health or safety hazards after the planned repairs are made. Section 504 funds may also be used to remove health and safety hazards from homes which, after removal of the hazard will meet MPS provided the house as improved does not exceed FmHA's definition of modest, and provided Section 502 funds cannot be used to make the necessary repairs. Authorized loan and grant purposes include but are not limited to the following:

(a) Installation and/or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements.

(b) Payment of reasonable connection fees for utilities (i.e., water, sewer, electric or gas) which are required to be paid by the applicant and which cannot be paid from other funds.

(c) Energy conservation measures such as:

(1) Insulation; and

(2) Combination screen-storm windows and doors.

(d) Repair or replacement of the heating system including installing alternative systems such as wood burning stoves or space heaters, when appropriate.

(e) Electrical wiring.

(f) Repair of or provision for structural supports.

(g) Repair or replacement of the roof.

(h) Replacement of severely deteriorated siding when the deterioration is causing a health or safety hazard.

(i) Payment of incidental expenses such as fees for credit reports, surveys, title clearance, loan closing, and architectural or other technical services.

(j) Necessary repairs to mobile homes provided the repairs made will not cause the mobile home to exceed the Federal Mobile Home Construction and Safety Standards as prescribed by the Department of Housing and Urban Development (HUD), and

(1) The applicant owns and occupies the mobile home and the site on which the mobile home is situated before application to FmHA.

(2) The mobile home is on a permanent foundation or will be put on a permanent foundation with 504 funds. A permanent foundation will be either:

(i) A full below-grade foundation, or

(ii) Removing wheels and placing mobile home on blocks, piers, or some similar type foundation, with skirting.

(3) The mobile home is in need of repairs to remove health or safety hazards.

(k) Additions to a dwelling (either to a conventional-type dwelling or to a mobile home) only when it is clearly necessary to remove health hazards to the occupants.

§ 1944.457 Loan and grant restrictions.

(a) *Maximum loan and/or grant.*

(1) Lifetime assistance to any individual or household for initial and/or subsequent Section 504 loans or combination loans and grants may not exceed a total of \$7,500, the grant portion of which may not exceed \$5,000.

(2) Lifetime assistance to any individual or household for initial and/or subsequent Section 504 grants may not exceed a total of \$5,000.

(3) Transferees assuming Section 504 loans are limited in the same manner to subsequent loans in amounts not to exceed the difference between the unpaid principal balance of the debt assumed and \$7,500.

(b) *Limitation on use of funds.* Section 504 loan or grant funds may not be used to:

(1) Assist in the construction of a new dwelling.

(2) Make changes to the dwelling for cosmetic or convenience purposes, unless the work is directly related to the removal of hazards. Cosmetic and convenience changes might include, but are not limited to:

(i) Painting;

(ii) Paneling;

(iii) Carpeting;

(iv) Improving clothes closets or shelving;

(v) Improving kitchen cabinets;

(vi) Air conditioning; or

(vii) Landscape plantings.

(3) Make repairs to a dwelling of such poor condition that when the repairs are completed, the dwelling will continue to

be a major hazard to the safety and health of the occupants.

(4) Install water and septic facilities on a mobile home site when the applicant has recently bought a mobile home and simply needs water and sewer facilities to "complete" the dwelling.

(5) Move a mobile home from one site to another.

(6) Pay fees, charges or commissions for packaging the application, or placement fees for the referrals of prospective applicants to FmHA.

(7) Pay for any off-site improvements.

§ 1944.458 Eligibility requirements.

(a) *Section 504 loan.* Section 504 loan applicants must meet the following requirements:

(1) *Owner/occupancy.* The applicant must be the owner-occupant, at the time of application, of a dwelling that is located in a rural area and is in need of repairs. Each applicant is required to submit evidence of ownership for retention in the loan docket. This evidence may be the original or a certified or photostatic copy of the instrument evidencing ownership. County Supervisors may require additional information from the applicant, or may seek advice of the Regional Attorney when necessary to determine the validity or adequacy of the evidence of ownership. Proof of ownership need not meet the requirements of Part 1807 of this chapter (FmHA Instruction 427.1).

(i) Evidence of the following will indicate ownership:

(A) Full marketable title.

(B) A land purchase contract.

(C) An undivided interest in the property to be repaired. Loans and/or grants may be made to persons having an undivided ownership interest in a property when:

(1) The applicant has been living in the house for at least 10 years prior to the date of application.

(2) The County Supervisor has no reason to believe the applicant's position of owner/occupant will be jeopardized as a result of the improvements to be made with loan/grant funds.

(3) In the case of a loan to be secured by a mortgage, any co-owner living or planning to live in the household will sign the mortgage.

(D) A leasehold interest in the property to be repaired. When the applicant's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the file. The unexpired portion of the lease must not be less than 1½ times the term of the

Promissory Note, or in the case of a grant, a period of not less than 10 years.

(E) A life estate, with the right of present possession, control, and beneficial use of the property.

(F) Grazing permits. Grazing permits may be accepted as evidence of ownership only for nonsecured loans or grants made to Indians living on a reservation, when historically the permits have been used by the Tribe and have had the comparable effect of a life estate.

(ii) The following items may be accepted as evidence of ownership:

(A) Any instrument whether or not recorded, which is commonly considered evidence of ownership.

(B) Evidence that the applicant is listed as the owner of the property by the local taxing authority and that real estate taxes for the property are paid by the applicant.

(C) Affidavits by others in community that the applicant has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

(2) *Legal capacity.* The applicant must possess legal capacity to incur the loan obligation, and have reached the age of legal majority in the State or have had the disability of minority removed by court action.

(3) *Income.* The applicant must have an adjusted income not exceeding 50 percent of the amount set forth as low income in Exhibit C, Subpart A of Part 1822 (FmHA Instruction 444.1). Exceptions to this requirement may be authorized by the State Director or the National Office if there is evidence to clearly indicate that Section 502 loans with interest credit at one (1) percent are not being made in the area to persons having similar incomes. However, no Section 504 assistance will be provided to persons having incomes exceeding that amount as set forth as low income in Exhibit C, Subpart A of Part 1822 (FmHA Instruction 444.1).

(4) *Income excluded.* The following income will not be included in determining annual adjusted income although it will be included for documenting and determining repayment ability:

(i) Income received by a full-time student (who is not the applicant or co-applicant) from employment, from GI Bill benefits, fellowships, scholarships, or assistantships for schooling.

(ii) Cash value of food stamps, real estate tax exemptions, or similar types of assistance.

(iii) Payments received for the care of foster children or foster adults.

(iv) Payments received for services rendered as a volunteer on a project

sponsored by any of the following programs:

(A) Retired Senior Volunteer Program.

(B) Foster Grandparent and Older American Community Service Programs (as either a foster grandparent, senior health aide or senior companion).

(C) National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Person with Business Experience.

(D) Peace Corps, VISTA, or any other volunteer program sponsored by ACTION.

(v) Allowances, such as training and travel expenses, paid by the Department of Labor to CETA participants. (Wages paid by the employers of CETA workers will be included.)

(vi) Any payments received by "live in" aides for members of a senior citizen applicant's household, paid by State or federal programs which specifically exclude the cost of shelter from the amount received.

(5) *Deductions.* The following deductions are allowed in determining the applicant's annual income:

(i) A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the applicant's trade, business, or farming operation. The applicant must provide an itemized schedule showing the depreciation claimed. The schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

(ii) A deduction may be made in the same manner as outlined in IRS regulations for necessary work-related expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and, in the judgment of the approving official, should be deducted from an employee's income to reflect annual income on an equal basis with other employed persons. Deductions, however, are not permitted for the following:

(A) Transportation to and from work.

(B) Cost of meals incurred on one day business trips.

(C) Educational expenses except those incurred to meet the minimum requirements for the employee's present position.

(D) Fines and penalties for violation of laws.

(iii) A maximum aggregate deduction of \$400 per month may be made for child care or disabled dependent care which is necessary to enable the applicant to be gainfully employed. The deduction

will be based only on monies actually paid for care services. Payments for these services may not be made to persons whom the applicant is entitled to claim as dependents for income tax purposes. Full justification for the deduction must be recorded in detail in the applicant's loan docket.

(iv) A maximum aggregate deduction of \$400 per month may be made for full-time nursing home or institutional type care which cannot be provided in the home for a member of the household. This care must be expected to be required for a period of six months or more. The deduction will be limited to expenditures actually paid for these services.

(6) *Repayment ability.* The applicant must have sufficient income to repay the Section 504 loan. An applicant whose income is not sufficient to fully meet the loan payments may obtain as a co-signer(s) a person(s) with dependably available income which will be sufficient to repay the loan. The co-signer must be an individual but may not be a member of the applicant's household.

Form FmHA 431-3, "Family Budget," will be prepared before approval of a grant. The budget will be used to determine repayment ability and as a basis for determining whether any part of the assistance will be a grant. The budget must evidence the applicant's inability to repay that part of the assistance to be received as a grant. Family Budgets will be prepared for Section 504 loan applicants to the extent necessary to determine repayment ability, and where it appears the applicant needs credit counseling in accordance with § 1944.467(b).

(7) *Other resources.* The applicant must be unable to obtain the needed credit from other sources including a Section 502 rural housing loan.

(8) *Personal resources.* The applicant must be unable to remove the safety or health hazard by utilizing personal resources such as:

(i) Cash and other assets such as stocks, bonds, certificates of deposit, etc. Small cash reserves not to exceed \$2,500 will be permitted as a buffer for emergency situations.

(ii) Real estate assets, other than dwelling and dwelling site. Exceptions may be granted by the State Director when those assets provide a major source of income essential to pay basic living expenses.

(9) *Net worth.* There is no net worth limitation when making Section 504 loans and grants except when the net worth reflects the availability of sufficient resources to make the repairs without Section 504 assistance.

(10) *Citizenship.* The applicant must be a citizen of the United States, a legally admitted permanent resident, or parolee, as set forth in § 1822.4(c) of this chapter (paragraph IV C of FmHA Instruction 444.1).

(11) *Credit history/creditworthiness.* The applicant must have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due. When making Section 504 loans, creditworthiness will be established in accordance with § 1910.5(c) of this chapter, except general credit requirements for Section 504 assistance will be less stringent than those for Section 502 loans. Very low-income applicants often have higher short-term debtloads in relation to income than persons with higher incomes. A court judgment against the applicant in and of itself, will not be a deterrent to making a loan but will be considered the same as any other debt. If, in the opinion of the County Supervisor, a court judgment is likely to be executed upon soon after the Section 504 repairs are made, the applicant may be refused assistance based on credit record. Credit reports will not be ordered in connection with the processing of Section 504 grant applications.

(b) *Combination Section 504 loan and grant.* In addition to the requirements of § 1944.458(a), in order to be eligible for a combination Section 504 loan and grant, the applicant or co-applicant must meet the following requirements:

(1) Be 62 years of age or older.
(2) Have an annual income so low that only part of the total cost of the needed repairs or improvements can be repaid as a Section 504 loan amortized over the maximum number of years.

(c) *Section 504 grant.* In addition to the requirements of § 1944.458 (a) and (b) of this subpart, a grant applicant must:

(1) Be 62 years of age or older, and
(2) Have an annual income so low that no part of the total assistance needed can be repaid as a loan.

§§ 1944.459-1944.460 [Reserved]

§ 1944.461 Security.

(a) *Real estate mortgage.* (1) A Section 504 loan which totals \$2,500 or more will be secured by a mortgage on the borrower's property being improved with the loan. The total of all debts secured by the property may not exceed the value of the security property.

(2) When making a loan of more than \$2,500 on a mobile home, the County Supervisor will seek the assistance of the Regional Attorney to determine how to obtain adequate security.

(3) Normally a loan of less than \$2,500 will be a note only loan although a loan of less than \$2,500 may be secured by real estate, if the County Supervisor determines security is essential to assure repayment of the loan.

(b) *Grant agreement.* (1) Each person receiving a grant will be required to sign a grant agreement (see Exhibit A of this Subpart) which states that the grantee will not sell the property, which has been repaired or improved with FmHA grant funds, for a period of 3 years. The agreement will provide that, if the property is sold before the end of the 3-year period, the full amount of the grant will be repaid to the Government.

(2) Each County Supervisor will take steps, to the extent possible and practical, to protect the Government's interest and promote FmHA's recovery of grant funds in the event of sale by the owner.

§ 1944.462 Rates and terms.

(a) The interest rate for all Section 504 loans is one (1) percent per annum.

(b) A Section 504 loan will be scheduled for repayment in accordance with the applicant's ability to pay, not to exceed a 20-year amortization period. When making a combination loan and grant, the loan portion of the assistance will be amortized over 20 years.

§ 1944.463 Technical services.

(a) *Planning and performing development work.* Bids will be obtained based on the list of essential repairs prepared by the County Supervisor at the time of the initial visit. Exhibit B of this Subpart may be used as a guide for the solicitation of bids. Each docket should contain detailed information about planned repairs. Bids should include written cost estimates, specifications of materials, and either Form FmHA 424-6, "Construction Contract," and Form FmHA 424-2, "Description of Materials," or a complete dollar breakdown of materials and labor for each item of development, as in Exhibit B of this Subpart. Specifications of materials should include details such as quantity, quality, sizes, grades, styles, model numbers, etc., as appropriate. Each item must be specific enough to clearly identify the work and material to be furnished. No Section 504 loan or grant will be approved until this requirement is satisfied.

(b) *Inspections.* Notwithstanding the provisions of § 1924.9 of this Chapter, only a final inspection made by the County Supervisor, of work in place is mandatory for all Section 504 loans and grants. Form FmHA 424-12, "Inspection

Report," will be used for this purpose. Additional inspections should be made by the County Supervisor, as needed, to assure that the work is performed in accordance with plans and specifications.

(c) *Appraisal.* An appraisal of the real estate or leasehold interest is not required unless the County Supervisor or loan approval official in uncertain of the adequacy of the security for the loan. If not formal appraisal is made, the County Supervisor will document in the case file, the estimated market value of the property.

(d) *Title requirements.* Loans made under this Instruction secured with a real estate mortgage need not meet the title requirements for Part 1807 of this Chapter (FmHA Instruction 427.1). This is so Section 504 applicants will not be burdened with expensive lien search and other loan closing costs. However, the County Supervisor will use all practical means to verify that title and lien information furnished by the applicant is complete and accurate.

§ 1944.464 Insurance requirements.

(a) *National flood insurance.* All actions under this Subpart are considered nonsubstantial improvements under the National Flood Insurance Program, and therefore flood insurance is not required.

(b) *Real property insurance.* Each Section 504 applicant will be counseled and encouraged to have adequate hazard insurance, and flood insurance if available, even though insurance coverage is not a requirement for an unsecured loan.

§§ 1944.465-1944.466 [Reserved]

§ 1944.467 Processing applications.

(a) *Application form.* Applications for Section 504 loans and grants will be made on Form FmHA 410-4, "Application for Rural Housing Loans (Non-Farm Tract)."

(b) *Family budget form.* (1) Form FmHA 431-3, "Family Budget," will be prepared for each grant recipient. A Family Budget will also be prepared for each loan applicant when:

(i) Form FmHA 410-4 does not provide sufficient information to determine the applicant's repayment ability.

(ii) The applicant needs credit counseling.

(2) The budget will consider and account for items such as:

(i) Non-cash benefits (food stamps, scholarships, free clothing, meals on wheels, free transportation, etc.) which help reduce the applicant's budgeted expenses. Receipt of benefits will be properly documented, and the

appropriate budget expenses will be reduced to reflect these benefits.

(ii) Income from sources not used to determine adjusted income such as earnings from employment of minors or from a fulltime student, who in neither the applicant nor spouse, foster care payments, or any similar income. These sources of income will be considered to the extent that they are used to offset budgeted expenses even though not included in "annual income."

(c) *Verification of income.* Income from employment will be verified by use of Form FmHA 410-5, "Request for Verification of Employment." Income from Social Security (SS), Supplemental Security Income (SSI), welfare, pension and other similar sources will be verified by the most convenient method for reasonable accuracy.

(d) *Cost estimates.* Written cost estimates will be required as outlined in § 1944.463 for all work to be performed. If, in the judgment of the County Supervisor, the cost estimate is not reasonable, additional cost estimates will be obtained.

(e) *Use of packagers.* Non-profit groups, churches, civic organizations, Community Action Program (CAP) or other special interest organizations may be interested in packaging Section 504 loan and grant application. Each County Supervisor should actively seek the assistance of these organizations and provide adequate orientation, including information on the provisions of the Equal Credit Opportunity Act regarding receipt of applications, so that their personnel will be able to submit an accurate and complete package, and be able to carry out the objectives and intent of the Section 504 program.

(f) *County Supervisor's responsibility.* For all applications, even those packaged by approved organizations, the County Supervisor must:

(1) Visit the applicant's home before loan approval to identify the existing hazards and determine what repair are essential to remove health or safety hazards. The date of this initial site visit will be documented in the running case record together with the identification of the hazards and a list of the essential repairs.

(2) Make the final inspection of the work in place.

(3) Assure that all monies are disbursed in accordance with Subpart A of Part 1902 of this chapter and § 1944.469 (d).

(g) *Determination of eligibility.* The County Supervisor will determine eligibility for all Section 504 loan and grant applicants based on the criteria outlined in § 1944.458.

(h) *Notification.* Notification of eligibility will be given all applicants in accordance with § 1910.6 of this chapter.

(1) Applicants denied the requested assistance will be provided the right to appeal in accordance with Subpart B of Part 1900 of this Chapter.

(2) The statement required by the Equal Credit Opportunity Act (see § 1910.6(b) of this chapter) will be included in all notifications of adverse actions.

§ 1944.468 Loan or grant approval.

(a) A Section 504 loan or grant may be approved in accordance with the authorization of Subpart A of Part 1901 of this Chapter.

(b) The loan/grant approving official is responsible for reviewing the docket to determine that the proposed loan or grant complies with established policies and all pertinent regulations and that funds are available.

(c) When a loan is approved, the approval official will forward the following forms to the Finance Office:

(1) Form FmHA 1940-1, "Request for Obligation of Funds."

(2) Form FmHA 444-2, "Single Family Housing Fund Analysis."

(d) When a grant is approved only Form FmHA 1940-1 will be forwarded to the Finance Office.

§ 1944.469 Loan and/or grant closing.

Each Section 504 loan and grant will be closed by the County Supervisor or other FmHA employee delegated to be a closing official.

(a) *Promissory note.* Form FmHA 440-16, "Promissory Note," will be used for each loan made under this Instruction. The note will be prepared and signed in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) and § 1944.458(a)(6) concerning co-signers. Each Promissory Note will be prepared for monthly payment.

(b) *Grant agreement.* A grant agreement will be executed for each grant made under this Instruction. The agreement will be prepared in accordance with Exhibit A of this Subpart, and signed by the grantee(s) and a representative of FmHA. The original signed document will be retained in position 2 of the County Office case file and a copy provided to the grantee.

(c) *Mortgage.* Form FmHA 427-1, "Real Estate Mortgage for (State)," will be used for each loan to be secured by a real estate mortgage. Each change made in the text by deletion, substitution or addition (excluding filling in the blanks) will be initialed in the margin by each person signing the mortgage and by the

FmHA official making the change. Language used for loans secured by a mortgage on a leasehold will be as stated in § 1822.15(b) of this chapter (Paragraph XV B of FmHA Instruction 444.1).

(d) *Supervised bank accounts.* A supervised bank account will be used for each Section 504 loan and/or grant unless the entire proceeds will be disbursed to a supplier or contractor at closing. The use of funds from other sources, which are deposited in a supervised bank account, will be accounted for by using columns 5 through 14 of Form FmHA 402-2, "Statement of Deposits and Withdrawals."

(e) *Disbursement of funds.* Funds deposited in supervised bank accounts will be disbursed in the following order of priority:

- (1) Applicant contribution;
- (2) Funds from sources other than FmHA;
- (3) FmHA Section 504 loan funds; and
- (4) FmHA Section 504 grant funds.

(f) *Unused funds.* Unused Section 504 funds will be handled as follows:

- (1) *Development work completed.* When all planned development has been satisfactorily completed, unused funds may be:
 - (i) Used to remove additional health and/or safety hazards if:
 - (A) The hazard is properly identified and documented by the County Supervisor, and
 - (B) The Development Plan is revised and updated to reflect the additional item(s) of development, and costs of labor and materials.
 - (ii) Returned to FmHA as unused grant funds;
 - (iii) Returned to the Finance Office and applied to the borrower's loan account, as a refund;
 - (iv) Used to pay the contractor in cases when the borrower or grantee dies before money is disbursed, if:
 - (A) There is substantial evidence that the borrower/grantee had verbally or otherwise accepted the work as complete and satisfactory, and
 - (B) The work was inspected and determined complete and satisfactory by the County Supervisor.
- (2) *Development work not completed.* Funds will be returned to the Finance Office when:
 - (i) It appears unlikely that the contractor is able or willing to complete the planned work and the County Supervisor has been unsuccessful in efforts to obtain other contractors, or
 - (ii) The purpose of the loan or grant cannot be accomplished due to the death of the borrower or grantee or

because the borrower or grantee no longer resides in the dwelling to be repaired.

§§ 1944.470-1944.471 [Reserved]

§ 1944.472 Subsequent Section 504 loans and/or grants.

Subsequent Section 504 loans or grants may be made for the same purposes and under the same conditions and limitations as initial Section 504 loans and grants including requirements that:

(a) The total amount of loan or combination loan and grant assistance (initial and subsequent) to any applicant may not exceed \$7,500.

(b) The total amount of grant (initial and subsequent) to any applicant may not exceed \$5,000.

(c) Transferees assuming a Section 504 loan are limited to subsequent loans in an amount not to exceed the difference between the unpaid principal balance of the debt assumed and \$7,500.

(d) The subsequent loan will be secured by a mortgage provided the total assistance to the applicant is \$2,500 or more. When a real estate mortgage is required, each outstanding promissory note will be described in the mortgage.

§ 1944.473 Improper loans and/or grants.

(a) Servicing action will be taken as soon as knowledge is obtained that incorrect information has been provided by a borrower or grantee or by any other person, or that an error has been made by a County Supervisor or any other FmHA employee. A Section 504 loan or grant will be considered improper when:

(1) A person has received more than the statutory maximum loan and/or grant.

(2) Monies were disbursed for unauthorized purposes.

(3) A loan or grant was made to an ineligible applicant.

(b) Improper advanced loan or grant funds may be recovered by:

- (1) Lump sum payment.
- (2) Execution of Form FmHA 451-37, "Additional Partial Payment Agreement."

(c) When § 1944.473 (b)(1) and (2) are impractical because of lack of repayment ability, the County Supervisor will seek the advice of the Regional Attorney as to how to recover the improperly disbursed funds. Consideration should be given to:

- (1) Securing the debt with the best mortgage obtainable from the borrower.
- (2) Obtaining a mortgage without personal liability of the grantee (in cases where grant only is involved). The mortgage would be due:

(i) Upon sale of the property by grantee.

(ii) Upon foreclosure by other creditors, or

(iii) When the property would be otherwise vacated by the grantee.

(iv) Upon death of the grantee.

(3) Obtaining a judgment of record. If the borrower or grantee refuses to sign a mortgage, the Regional Attorney may be requested to cause a lawsuit to be commenced against the borrower or grantee to recover the improperly disbursed funds. Any judgment entered in such a lawsuit would be reviewed periodically to comply with State statutes. If the borrower or grantee did not obtain the loan or grant fraudulently, the judgment will be executed only:

(i) Upon the sale of the property by the owner,

(ii) Upon foreclosure by other creditors,

(iii) Upon property settlement in the event of the owner's death, or

(iv) Upon abandonment of the property by the borrower or grantee.

§ 1944.474-1944.500 [Reserved]

Exhibit A—Agreement—Section 504 Grant

I (we) the undersigned, hereby agree not to sell the property located at _____ being repaired with grant funds provided by the Farmers Home Administration for a period of three years from the date of this agreement. Should I (we) sell the above-described property within three years, I (we) agree to repay to the Farmer's Home Administration, at the time of the sale, the full amount of the grant, which is \$____.

(Grantee) _____
(Date) _____
(Grantee) _____

(Representative, Farmers Home Administration)
(Date) _____

Exhibit B—Solicitation of Bids

(Home Owner) _____
(Address) _____
(Bidder) _____
(Address) _____

Development	Material	Specification
Material	Labor	
\$	\$	

Subtotals \$ _____
Totals \$ _____

(Date) _____
(Contractor Signature) _____

Dated: October 7, 1981.

Ruth A. Reister,
Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 81-35952 Filed 12-15-81; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R-0376]

Bank Holding Companies and Change in Bank Control; Application To Engage in the Activity of Arranging Equity Financing, and of Possible Rulemaking With Respect Thereto**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Notice of application and of possible rulemaking.

SUMMARY: BankAmerica Corporation, San Francisco, California, has applied under section 4(c)(8) of the Bank Holding Company Act to engage, through its subsidiary, BA Mortgage and International Realty Company, San Francisco, California, in the activity of "arranging equity financing for income-producing properties with institutional lenders." Under section 4(c)(8), the Board must determine whether the proposed activity is closely related to banking, or managing and controlling banks and whether performance of the proposed activity by the applicant could reasonably be expected to produce public benefits that outweigh possible adverse effects. In conjunction with its consideration of this application, the Board also may consider amending its Regulation Y (12 CFR Part 225) to permit bank holding companies to engage in this activity.

DATE: Comments must be received by February 1, 1982.

ADDRESS: Comments, which should refer to Docket No. R-0376, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-11222, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Bronwen Mason, Senior Counsel (202-452-3584), or Mary Ann Gadziala, Attorney (202-452-3786), Legal Division, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION:

(1) Notice of application BankAmerica Corporation, San Francisco, California ("BankAmerica"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)) to engage, through its

subsidiary, BA Mortgage and International Realty Company, San Francisco, California ("BAMIRC"), in the activity of "arranging equity financing for income-producing properties with institutional lenders." BAMIRC currently engages in permissible mortgage banking activities under § 225.4(a)(1) and (3) of Regulation Y (12 CFR 225.4(a)(1) and (3)). In a letter dated January 16, 1981, BankAmerica was advised that BAMIRC may place equity interests in real estate, as an incident to its permissible mortgage banking activities, where such equities are placed in connection with lending transactions in which BAMIRC is a participant, or as part of a package where a permanent mortgage loan is being made in connection with the placement of the equity. In its application BankAmerica seeks Board approval for BAMIRC to arrange for the placement of an equity interest in real estate (so-called equity financing) where no extension of credit is made or arranged by BAMIRC in connection with the project. This activity has not previously been determined by the Board to be closely related to banking. In fact, this activity appears to bear numerous similarities to real estate brokerage, an activity the Board has previously determined is not closely related to banking. (12 CFR 225.126(c)).

In distinguishing the proposed activity from real estate brokerage, BankAmerica proposes to limit the activity in the following manner:

1. Equity financing would be arranged only for income-producing properties;
2. Each equity financing arrangement would generally exceed \$500,000;
3. Investors with whom equity financings would be arranged would be institutional investors (including "substantial and sophisticated individual investors, primarily foreigners"); and
4. The activity would be conducted only by a company generally engaged in the mortgage banking business.

BankAmerica contends that the proposed equity financing activity serves as an economic substitute for traditional financing in the form of long-term mortgages previously arranged with institutional investors. It points out that as a result of persistent high inflation and the volatility in interest rates, institutional investors have become very reluctant to provide long-term debt financing in the form of traditional mortgage loans.

BankAmerica further states that since funds previously channeled into such investments are currently applied toward the acquisition of equity interests in income-producing real estate

projects, it is necessary for mortgage banking subsidiaries of bank holding companies to engage in equity financing in order for them to continue to function as intermediaries between investors and developers and owners of income-producing properties. Finally, BankAmerica contends that making funds available for development and financing of real property is a traditional banking activity and is, in fact, conducted directly by national banks through lending, brokering real estate loans, and syndicating such loans. Thus, the proposed form of substitute financing, made necessary by current economic conditions, should be considered an activity closely related to banking for purposes of section 4(c)(8) of the BHC Act.

Under general guidelines provided in a federal circuit court opinion, a nonbanking activity may be regarded as closely related to banking if it meets one of the following criteria: (1) banks generally have in fact provided the proposed service; (2) banks generally provide services that are operationally or functionally so similar to the proposed service as to equip them particularly well to provide the proposed service; or (3) banks generally provide services that are so integrally related to the proposed service as to require their provision in a specialized form. *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). The Board has found such guidelines useful in considering whether or not a proposed nonbanking activity is closely related to banking. In addition, the Board may consider other factors in deciding what activities are closely related to banking. *Alabama Association of Insurance Agents v. Board of Governors*, 533 F.2d 224, 241 (5th Cir. 1976). Moreover, a recent decision of the Supreme Court states that the Board's decisions in this regard are entitled to the "greatest deference." *Board of Governors v. Investment Company Institute*, 101 S. Ct. 973, 981 (1981).

(2) *Possible Rulemaking.* In connection with its consideration of BankAmerica's application, the Board also may consider whether § 225.4(a) of Regulation Y (12 CFR 225.4(a)) should be amended to add the activity proposed by BankAmerica to those permissible under section 4(c)(8) of the BHC Act. The primary effect of amending Regulation Y to add the proposed activity rather than approving this application by order, would be to permit any bank holding company to engage *de*

novo in the activity upon giving 45 days' notice to the appropriate Reserve Bank.

(3) *Submission of Comments.* To aid the Board in its consideration of BankAmerica's application and possible rulemaking, interested persons are invited to comment on whether the proposed equity financing activity is "closely related to banking or managing or controlling banks" and whether consummation of BankAmerica's proposal to engage in the activity can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." In addition, the Board requests comment concerning how the proposed activity differs from the activity of real estate brokerage and real estate syndication, activities that the Board has determined are not closely related to banking. Finally, comment is also being sought regarding the four limitations proposed by BankAmerica on its equity financing activities, and any additional limitations or conditions that should be imposed to ensure that the activity is closely related to banking and a proper incident thereto. Any request for hearing on this matter must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This action is taken pursuant to section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)), and § 225.4(a) of the Board's Regulation Y (12 CFR 225.4(a)).

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354; 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that any amendment that might be adopted as a result of action on this matter, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The proposed amendment would liberalize the existing regulations and would not have any particular effect on small entities that would be subject thereto.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 10, 1981.

James McAfee,
Assistant Secretary of the Board.

[FR Doc. 81-35865 Filed 12-15-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 22

[Docket No. SD-174]

Change in Fees for Consular Services

AGENCY: State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes an increase in the fees charged for the processing and issuance of immigrant visas. The changes are being made in accordance with a Department study of policies, costs and fees for consular services, and with the user charge principle, as prescribed by the Congress and applied by the Department in keeping with guidelines of the Office of Management and Budget.

DATES: Comments must be submitted on or before February 1, 1982. The proposed effective date is February 8, 1982.

ADDRESS: Send comments to Mr. Ronald K. Somerville, Executive Director, Bureau of Consular Affairs, Department of State, 2201 C Street NW., Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Philip B. Taylor (202) 632-3118.

SUPPLEMENTARY INFORMATION: This revision increases the fee for furnishing and verification of application for an immigrant visa, including duplicate copy, and the fee for issuance of each immigrant visa. The changes are being made in accordance with a Department study of policies, costs and fees for consular services, and with the user charge principle, as prescribed by the Congress and applied by the Department in keeping with guidelines of the Office of Management and Budget.

Accordingly, Part 22 of Title 22 of the Code of Federal Regulations would be amended as set forth below.

Dated: December 1, 1981.

Richard T. Kennedy,
Under Secretary for Management.

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

The authority citation for 22 CFR Part 22 reads as follows:

Authority: Secs. 3, 4, 63 Stat. 111, as amended (22 U.S.C. 811a; 2658; 22 U.S.C. 2651; 5 U.S.C. 483a; 22 U.S.C. 1201); E.O. 10718, 22 FR 4632; 3 CFR, 1954-1958 Comp. page 382.

In § 22.1, Item numbers 20 and 21 are revised to read as follows:

§ 22.1 Schedule of fees

Item No.	Visa services for aliens	Fee
20.	Furnishing and verification of application for immigrant visa, including duplicate copy (112-IVAPPL).	\$25.00
21.	Issuance of each immigrant visa (113-IV ISSUANCE), (114-R IV ISS), (115-211 WAIV/ISS).	\$75.00

[FR Doc. 81-35861 Filed 12-15-81; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 221

Oil and Gas Operating Regulations

AGENCY: Geological Survey, Interior.

ACTION: Extension of comment period on proposed rulemaking.

SUMMARY: In response to requests for an extension of time to comment on the proposed rulemaking on Oil and Gas Operating Regulations (30 CFR Part 221) published in the *Federal Register* November 17, 1981 (46 FR 56564), a 30-day extension is hereby granted. This extension will give the public more time to study and comment on the proposed rulemaking.

DATE: Comments on this proposed rulemaking must be received by January 18, 1982.

ADDRESS: Comments may be mailed to: Mr. Eddie R. Wyatt, Acting Deputy Division Chief, Onshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 650, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860-7535, (FTS) 928-7535, or Mr. Spector, (703) 860-6259, (FTS) 928-6259.

Dated: December 11, 1981.

Daniel N. Miller,
Assistant Secretary of the Interior.

[FR Doc. 81-35841 Filed 12-14-81; 8:45 am]

BILLING CODE 4130-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: DOD, Office of the Secretary.

ACTION: Withdrawal of proposed rule.

SUMMARY: This withdraws the proposed amendment to the CHAMPUS Regulation which would have eliminated Residential Treatment Centers (RTC's) as authorized providers under CHAMPUS. Analysis of public comments received as a result of the notice of proposed rulemaking has led to a decision to retain RTC care as a benefit and to deal with the problems experienced in the past by strengthening monitoring and review practices.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, Aurora, Colorado 80045.

FOR FURTHER INFORMATION CONTACT:

Charles M. Gallegos, Chief, Policy Branch, telephone (303) 361-8808.

SUPPLEMENTARY INFORMATION: On July 31, 1981, the Office of the Secretary of Defense published a proposed amendment to Part 199 of this title to eliminate Residential Treatment Centers (RTC's) as authorized providers under CHAMPUS (46 FR 39167). Comments were to be submitted by August 31, 1981, later extended to October 31, 1981 (46 FR 46597).

Under the proposed amendment, CHAMPUS benefits would have terminated for new admissions to RTC's on January 1, 1982. Benefits would have terminated for all RTC care on September 30, 1982.

During the comment period, a series of meetings were held with Congressional offices, major professional organizations and public agencies. At the conclusion of the comment period, an analysis was conducted of the approximately 600 comments received from parents of current and former RTC patients, RTC's and RTC employees, other providers of mental health services, professional organizations, State and Federal agencies, Congressional offices and other interested parties.

The commenters overwhelmingly urged the Department of Defense not to implement the proposed amendment. Although the basis for the proposal was not a concern for the costs of the RTC

benefit, but rather our difficulty in assuring that the government's funds were being expended for services of high quality and in accordance with law and regulation. Most commenters assumed that the amendment was being proposed as a cost-saving measure and pointed out that meeting the mental health needs of the children affected in acute care psychiatric hospitals would, in most cases, increase the government's costs.

Some commenters, in responding to the amendment's provision regarding acute psychiatric hospital benefits for the former RTC patients, pointed out that psychiatric hospitalization is not necessarily the treatment of choice for children and adolescents.

The numerous professional providers of mental health services and the professional organizations who commented were unanimous in their contention that the care provided by RTC's is effective, non-duplicative of other types of care and an essential treatment point along the continuum of mental health care for children and adolescents.

While conceding that there are problems with some RTC's, most of the professional organizations that commented suggested that we strengthen controls and increase peer review activities rather than eliminate the benefit entirely.

The comments received, as well as our own re-evaluation of the benefit itself, have persuaded us that RTC care should continue as a part of the CHAMPUS benefit package. Therefore, we are withdrawing the proposed amendment. RTC's will continue to be considered authorized providers under CHAMPUS. Over the next several months, we plan to review facility approval standards to determine if they can be improved, develop and execute RTC participation agreements, consider alternative payment mechanisms which might benefit both the RTC and the program, and to design and institute comprehensive claims and on-site review procedures necessary to insure the RTC benefit is appropriately available to children and adolescents in need of the RTC level of care.

M. S. Healy,

OSD Federal Register Liaison Officer,
Washington Headquarters Services,
Department of Defense.

December 11, 1981.

[FR Doc. 81-35883 Filed 12-15-81; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL EMERGENCY
MANAGEMENT AGENCY

44 CFR Part 68

[Docket No. FEMA-68A]

Base Flood Elevation Determinations;
Administrative Hearing Procedures

AGENCY: Federal Emergency
Management Agency.

ACTION: Proposed Rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) proposes to revise its procedures for holding administrative hearings for resolution of appeals of its base flood elevation determinations. The purpose of this proposed revision is to provide a more efficient hearing process. This proposed revision establishes a three hearing board which includes two members qualified in the field of technical base flood elevation determinations to replace the current requirement of a single administrative law judge or hearing officer as presiding official. The board's decision will be a recommendation to the Agency Director who will make the final base flood elevation determination. Other minor changes consistent with these revisions have been proposed to improve the administrative hearing procedures.

DATE: Comments received on or before February 16, 1982, will be considered before publication of a final rule.

ADDRESS: Comments should be mailed or delivered in duplicate to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregg Chappell, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: Section 1363 of the National Flood Insurance Act of 1968, as amended, provides that a community may appeal flood elevation determinations proposed by FEMA. Section 1363(e) provides in part: "The (Director) shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice." The administrative hearing procedures for base flood elevation appeals are set forth in 44 CFR

Part 68 of the National Flood Insurance Program regulations.

These procedures currently provide for an administrative law judge to preside over such hearings (§ 68.4). With the complexity of technical involvement in determining flood elevations, FEMA proposes that a better way to secure informed technical review at these hearings is to have them conducted by a hearing board with members who are technically qualified to review flood elevation data. Specifically, this proposed revision (§ 68.4) establishes a three member hearing board to replace the current requirement of a single administrative law judge or hearing officer as presiding official.

In addition, these procedures (specifically §§ 68.2, 68.3 and 68.4) are being revised to ensure a fair and impractical procedure and to reflect the internal reorganization of FEMA and recent delegations of authority made pursuant to the reorganization. The Associate Director for State and Local Programs and Support will have responsibility for determining whether an administrative hearing will be held. The Agency Director will appoint an administrative law judge based upon a recommendation by the Office of Personnel Management. The administrative law judge will chair the board. The two remaining members, who must be qualified in the technical field of flood elevation determinations, will be selected by the appointed administrative law judge. The judge shall consult with anyone he deems appropriate to determine the technical qualifications of individuals being considered for appointment to the board. The board members shall not be FEMA employees.

Section 68.3 is being revised to reflect clearly the statutory discretion allowed the Associate Director in determining whether to hold a hearing. It is proposed that the Associate Director shall hold an administrative hearing after determining that the appeal cannot be resolved by community consultation or by the advice of an independent scientific body or an appropriate Federal agency. The purpose of this section is to conserve administrative resources.

Section 68.8 has been made more specific to limit the scope of review of the administrative hearing to only that information which would be pertinent to scientific or technically correct base flood elevations. Section 68.9 has also been made more specific and limited for the same reason by deleting § 68.9(b) and (e).

Section 68.11 has been revised to reflect the change from an administrative law judge/hearing officer as the presiding official to the three

member hearing board as provided in the new § 68.4. The board shall have 45 days after the conclusion of the hearing to render a written decision and the entire record will be sent to the Director for review and final determination.

Under the current § 68.13, any modification to the base flood elevations granted by the administrative law judge was binding on the Director. Under this proposed rule change (§ 68.11), the hearing board's determination will be in the form of a recommendation to the Director. The Director will be the final decision-maker and shall approve or disapprove, in whole or in part, the recommendation of the board. Any appellant aggrieved by the Director's decision will have the right of appeal to the United States district court for the district within which the community is located as provided by Section 1363(f) of the National Flood Insurance Act of 1968, *as amended*.

An environmental assessment is not necessary because this rule change is procedural and has no effect on the quality of the human environment. This rule change is not a "major rule" within the context of Executive Order 12291. This rule does not have a significant economic impact on a substantial number of small entities because it calls for improving the appeals process for base flood elevation determinations.

Accordingly, it is proposed to revise 44 CFR Part 68 to read as follows:

PART 68—ADMINISTRATIVE HEARING PROCEDURES

Sec.

- 68.1 Purpose of part.
- 68.2 Definitions.
- 68.3 Right to administrative hearings.
- 68.4 Hearing board.
- 68.5 Establishment of docket.
- 68.6 Time and place of hearing.
- 68.7 Conduct of hearings.
- 68.8 Scope of review.
- 68.9 Admissible evidence.
- 68.10 Burden of proof.
- 68.11 Determination.
- 68.12 Relief.

Authority: Sec. 1304(a), 1363 of the National Flood Insurance Act of 1968, *as amended*, 82 stat. 574 (42 U.S.C. 4011-4104); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Associate Director, State and Local Programs and Support.

§ 68.1 Purpose of part.

The purpose of this part is to establish procedures for appeals of the Associate Director's base flood elevation determination, whether proposed pursuant to Section 1363(e) of the Act (42 U.S.C. 4104) or modified because of

changed conditions or newly acquired scientific and technical information.

§ 68.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part. For the purposes of this part, "Director" shall mean the Director of the Federal Emergency Management Agency and "Associate Director" shall mean Associate Director for State and Local Programs and Support.

§ 68.3 Right to Administrative Hearings.

If a community appeals the Associate Director's flood elevation determination established pursuant to § 67.8 of this subchapter, and the Associate Director has determined that such appeal cannot be resolved by consultation with officials of the community or by submitting the conflicting data to an independent scientific body or appropriate Federal agency for advice, the Associate Director shall hold an administrative hearing to resolve the appeal.

§ 68.4 Hearing board.

(a) Each hearing shall be conducted by a three member hearing board (hereinafter "board"). The board shall consist of an administrative law judge (hereinafter "Judge") appointed by the Director based upon a recommendation by the Office of Personnel Management and two members selected by the Judge who are qualified in the technical field of flood elevation determinations. The Judge shall consult with anyone he deems appropriate to determine the technical qualifications of individuals being considered for appointment to the board. The board members shall not be FEMA employees.

(b) The Judge shall be responsible for conducting the hearing, and shall make all procedural rulings during the course of the hearing. Any formal orders and the final decision on the merits of the hearing shall be made by a majority of the board. A dissenting member may submit a separate opinion for the record.

(c) A technically qualified alternate will be appointed by the Judge as a member of the board when a technically qualified appointed member becomes unavailable. The Director will appoint an alternate Judge if the appointed Judge becomes unavailable.

§ 68.5 Establishment of docket.

The General Counsel shall establish a docket for appeals referred to him/her by the Associate director for administrative hearings. This docket shall include, for each appeal, copies of all materials contained in the flood elevation determination docket (FEDD) file on the matter, copies of all correspondence in connection with the

appeal, all motions, orders, statements, and other legal documents, a transcript of the hearing, and the board's final determination.

§ 68.6 Time and place of hearing.

(a) The time and place of each hearing shall be designated by the Judge for that hearing. The Associate Director and the General Counsel shall be promptly advised of such designations.

(b) The board's notice of the time and place of hearing shall be sent by the Flood Insurance Docket Clerk by registered or certified mail, return receipt requested, to all appellants. Such notice shall include a statement indicating the nature of the proceedings and their purpose and all appellants' entitlement to counsel. Notice of the hearing shall be sent no later than 30 days before the date of hearing unless such period is waived by all appellants.

§ 68.7 Conduct of hearings.

(a) The Judge shall be responsible for the fair and expeditious conduct of proceedings.

(b) The Associate Director shall be represented by the General Counsel or his/her designee.

(c) One administrative hearing shall be held for any one community unless the Associate Director for good cause shown grants a separate hearing or hearings.

(d) The Chief Executive Officer (CEO) of the community or designee shall represent all appellants from that community; *Provided*, That any appellant may petition the board to allow such appellant to make an appearance on his/her own behalf. Such a petition shall be granted only upon a showing of good cause.

(e) Hearings shall be open to the public.

(f) A verbatim transcript will be made of the hearing.

An appellant may order copies of the transcribed verbatim record directly from the reporter and will be responsible for payments.

§ 68.8 Scope of review.

Review at administrative hearings shall be limited to: An examination of any information presented by each appellant within the 90 day appeal period indicating that elevations proposed by the Associate Director are scientifically or technically incorrect; the FIRM; the flood insurance study; its backup data and the references used in development of the flood insurance study; and responses by FEMA to the issues raised by the appellant(s).

§ 68.9 Admissible evidence.

(a) Legal rules of evidence shall not be in effect at administrative hearings. However, *only* evidence relevant to issues within the scope of review under § 68.8 shall be admissible.

(b) Documentary and oral evidence shall be admissible.

(c) Admissibility of non-expert testimony shall be within the discretion of the board.

(d) All testimony shall be under oath.

§ 68.10 Burden of proof.

The burden shall be on appellants to prove that the flood elevation determination is not scientifically or technically correct.

§ 68.11 Determination.

The board shall render its written decision within 45 days after the conclusion of the hearing. The entire record of the hearing including the board's decision will be sent to the Director for review and approval. The Director shall make the final base flood elevation determination by accepting in whole or in part or by rejecting the board's decision.

§ 68.12 Relief.

The final determination may be appealed by the appellant to the United States district court as provided in Section 1363(f) of the Act (42 U.S.C. 4104).

(Catalog of Federal Domestic Assistance Number 83.100 National Flood Insurance Program)

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-36018 Filed 12-15-81; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-840; RM-3929]

TV Broadcast Station in Wadena, Minnesota; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This action proposes the assignment of UHF television Channel 42 to Wadena, Minnesota, in response to a petition filed by WCCO, Television, Inc. The proposed assignment would provide for a first commercial television service to Wadena.

DATES: Comments must be filed on or before January 25, 1982, and reply comment on or before February 10, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

Proposed Rule Making

Adopted: December 1, 1981.

Released: December 9, 1981.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Wadena, Minnesota), BC Docket No. 81-840 RM-3929.

1. The Commission herein considers a petition for rule making¹ filed by WCCO, Television, Inc. ("petitioner"),² proposing the assignment of UHF television Channel 42 to Wadena, Minnesota, as its first commercial television assignment. Petitioner states that it will apply for the channel, if assigned. Opposing comments were filed by Central Minnesota Television Company ("Central"),³ to which the petitioner responded.

2. Wadena (population 4,640,⁴ seat of Wadena County (population 12,412) is located in central Minnesota, approximately 210 kilometers (130 miles) northwest of Minneapolis. It currently has one television assignment (noncommercial educational Channel 20).

3. Petitioner states that Wadena's economy is diversified. The proposed station could provide an opportunity for a new television service, with CBS network affiliation. Petitioner submitted sufficient information to demonstrate the need for a first commercial television assignment to Wadena.

4. Central, in opposing comments, argues that Channel 42 should be assigned to Alexandria, Minnesota, and if assigned, it would apply for its use as a satellite of WCCO-TV. It contends that the assignment of Channel 42 to Wadena would remove Wadena County from Alexandria's Area of Dominant Influence (ADI), thereby weakening the economic conditions of the market and KCMT's (Central) ability to serve the public interest. This removal would not directly affect Central's financial condition, rather it involves the

¹ Public Notice of the petition was given on July 8, 1981, Report No. 1296.

² WCCO Television, Inc., is the licensee of Station WCCO-TV, Minneapolis, Minnesota.

³ Central is the licensee of television Stations KCMT, Alexandria, and KNMT, Walker, Minnesota.

⁴ Population figures are taken from the 1970 U.S. Census.

methodology used by Arbitron for assigning a county to a particular television market. Central further claims that assigning Channel 42 to Alexandria would provide WCCO-TV the same coverage area it currently anticipates, and provide an additional signal to the public, while preserving, if not enhancing, the viability of Alexandria's market.

5. Petitioner in reply comments, argues that its proposal would provide a first primary television service to a 1,100 square kilometer area (409 square miles) for 10,934 persons, and a second primary television service to a 16,000 square kilometer area (5,936 square miles) for 114,692 persons. The opposition, for solely economic reasons, would deprive Wadena of a possible first local television service in favor of a second service to Alexandria. Its reliance on the Alexandria ADI as the determinant of the public interest is misplaced, since the ADI concept was designed by Arbitron (a private for-profit organization) as a marketing tool for advertisers and their agencies. Petitioner contends that Central's allegation that its economic viability and thus the local service to Alexandria would be threatened by the proposed assignment is speculative and should not influence the Commission's decision in the proceeding. Petitioner urges the Commission to disregard the opposition's proposal and assign Channel 42 to Wadena.

6. The opposition's focus on the economic viability of the Alexandria ADI (through the loss of Wadena County by the proposed assignment) is not a matter that can be addressed by the rule making proceeding. Arbitron's use of market services is not subject to Commission control. Their inclusion of a service and rating of a market can change without taking into account any specific assignments made by the Commission. Our impression of the relevancy of this matter is more a private one, i.e., potential economic benefits to stations included in the market, than a public interest consideration. As an allocations issue, the assignment of Channel 42 to Wadena is clearly preferable under the information provided thus far. First, the channel could be used to bring a first local service to Wadena while Alexandria already has local TV service. Secondly, substantial first and second primary TV services could be provided. Therefore, we shall propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with regard to Wadena, Minnesota, as follows:

City	Channel No.	
	Present	Proposed
Wadena, Minnesota	*20-	*29- 42+

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before January 25, 1982, and reply comments on or before February 10, 1982.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division,
Broadcast Bureau.

Appendix

[BC Docket No. 81-840 RM-3929]

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 81-35851 Filed 12-15-81; 6:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-839; RM-3912]

TV Broadcast Station in Shawnee, Oklahoma; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF television Channel 30 to Shawnee, Oklahoma, as its first television assignment in response to a petition filed by Canadian Valley Television, Inc.

DATES: Comments must be filed on or before January 25, 1982, and reply comments on or before February 10, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Proposed Rule Making

Adopted: December 1, 1981.

Released: December 9, 1981.

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Shawnee, Oklahoma), BC Docket No. 81-839 RM-3912.

1. The Commission herein considers a petition for rule making¹ filed by Canadian Valley Television, Inc. ("petitioner"), which seeks the assignment of UHF television Channel 30 to Shawnee, Oklahoma. Petitioner expressed an interest in applying for the channel, if assigned. No oppositions to the proposal were received.

2. Shawnee (pop. 25,075),² seat of Pottawatomie County (pop. 43,134), is located approximately 50 kilometers (33 miles) east of Oklahoma City. It has no local television broadcast service.

3. According to the petitioner, Shawnee's economy, based on city government, professional offices, banks, businesses and cultural activities, would support a first television assignment. There is a growing need for a local television facility, with programming directed toward the needs of the community and coverage of local events. While service is received from

Oklahoma City stations, its programming gives little attention to Shawnee.

4. In view of the foregoing, the Commission finds that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Rules), with regard to the city of Shawnee, Oklahoma, as follows:

City	Channel No.	
	Present	Proposed
Shawnee, Oklahoma		30

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before January 25, 1982 and reply comments on or before February 10, 1982.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules. *See, Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division
Broadcast Bureau.

Appendix

[BC Docket No. 81-839 RM-3912]

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

¹Public Notice of the petition was given on June 19, 1981, Report 1293.

²Population figures are taken from the 1980 U.S. Census.

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished to the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

(FR Doc. 81-35049 Filed 12-15-81; 8:45 am)

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-841; RM-3879 & 3945]

FM Broadcast Station in Giddings and Nelsonville, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to either Giddings or Nelsonville, Texas, in response to petitions filed by Michael G. Wallace and by J. Lee and Dinah L. Ditter, dba Radio Ten-Ninety, respectively. The proposals would provide a first local broadcast service to either community.

DATES: Comments must be filed on or before January 25, 1982 and reply comments on or before February 10, 1982.

ADDRESS: Federal Communication Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Proposed Rule Making

Adopted: December 1, 1981.

Released: December 9, 1981.

In the Matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Giddings and Nelsonville, Texas), BC Docket No. 81-841 RM-3879 RM-3945.

1. The Commission herein considers two separate petitions for rule making. The first was filed by Michael G. Wallace ("petitioner"), proposing the assignment of Channel 269A to Giddings, Texas, as its first FM assignment.¹ The second was filed by J. Lee and Dinah L. Ditter, d/b/a Radio

Ten-Ninety,² which proposes the assignment of Channel 269A to Nelsonville, Texas.³ Since the distance between Giddings and Nelsonville is approximately 56 kilometers (35 miles) and the required separation for co-channel Class A assignments is 104 kilometers (65 miles), these proposals are mutually exclusive. No other channels are available for assignment to either community. Comments in support of the "Wallace" proposal were filed by Commerce Broadcasting, Inc. and by Orion Communications, both stating their intent to apply for the channel, if assigned.

2. Giddings (pop. 3,950),⁴ seat of Lee County (pop. 10,952), is located approximately 80 kilometers (50 miles) east of Austin, Texas. Nelsonville (pop. not listed) in Austin County (pop. 17,726) is located approximately 102 kilometers (64 miles) west of Houston. Both communities are without local aural broadcast service.

3. Wallace asserts that the economy of Giddings is based on oil and gas production, agriculture, and varied manufacturing activities, and that the population has shown a substantial growth in recent years due mainly to the petroleum exploration and production. According to Radio Ten-Ninety the proposed Channel 269A assignment to Nelsonville would render a first primary nighttime service to Austin County. We are also told that the county is undergoing substantial growth, due to the related explosive growth at Houston. Nelsonville's population (less than 1,000) is comprised of retired citizens. Both petitioners stated their intent to apply for the channel, if assigned. Orion Communications and Commerce Broadcasting each provided additional information in support of the Giddings request and indicated their desire to apply for a Giddings station.

4. Since Giddings is the larger of the two communities our tentative conclusion would be to propose the channel to Giddings. However inasmuch as there are no other channels available to either community, we shall provide the Nelsonville proponent an opportunity to further demonstrate, in comments to this proposal, why Nelsonville should receive the assignment. The assignment of Channel 269A to Nelsonville would require a site restriction of approximately 5 miles west of the city.

5. In view of the foregoing the Commission proposes to amend the FM

Table of Assignments, § 73.202(b) of the Commission's rules, with regard to the following cities:

City	Channel No.	
	Present	Proposed
Giddings, Texas		269A
Nelsonville, Texas		269A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before January 25, 1982 and reply comments on or before February 10, 1982.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. *See, Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.*

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

(Secs. 4, 303, 48 Stat., as amended, 1086, 1087 47 U.S.C. 154, 303)

Federal Communications Commission.
Martin Blumenthal,
Acting Chief, Policy and Rule Division,
Broadcast Bureau.

Appendix

[BC Docket No. 81-841 RM-3912]

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the

¹ Public Notice of the petition was given on April 17, 1981, Report No. 1281. Petitioner had requested the assignment of Channel 224A to Giddings, which was short-spaced to Channel 223 at Pasadena, Texas. A site restriction of 7.9 miles northwest of the city would not have been adequate to provide a 70 dBu signal over Giddings. Therefore we substituted Channel 269A for consideration herein.

² Licensee of AM Station KACO, Bellville, Texas.

³ Public Notice of the petition was given on July 28, 1981, Report No. 1300.

⁴ Population figures are taken from the 1980 U.S. Census.

Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public *Notice* to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments:* Service. Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of

service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished to the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 81-85850 Filed 12-15-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-742]

Formulation of Policies Relating to the Broadcast Renewal Applicant Stemming from the Comparative Hearing Process; Extension of Comment/Reply Comment Period

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of comment/reply comment period.

SUMMARY: This action, by the General Counsel pursuant to delegated authority, grants request by National Association of Broadcasters to extend the time for filing of comments and reply comments in response to the Commission's *Notice of Inquiry in BC Docket No. 81-742, Formulation of Policies Relating to the Broadcast Renewal Applicant Stemming from the Comparative Hearing Process.*

DATES: The deadline for filing comments has been extended from December 28, 1981 to January 15, 1982, and for reply comments from January 18, 1982 to February 5, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sheldon Guttman, Office of General Counsel, (202) 632-6990.

SUPPLEMENTARY INFORMATION: Order

Adopted: December 8, 1981.

Released: December 8, 1981.

In the Matter of formulation of policies relating to the broadcast renewal applicant stemming from the comparative hearing process. BC Docket No: 81-742.

1. The Commission has before it a request for extension of time in which to file comments and reply comments in response to the Commission's *Notice of Inquiry in BC Docket No. 81-742, Formulation of Policies Relating to the Broadcast Renewal Applicant Stemming from the Comparative Hearing Process*, FCC 81-499, 46 FR 55279 (Nov. 9, 1981). The extension request was filed by the National Association of Broadcasters (NAB) on December 3, 1981, and asks that the Commission extend the time for filing initial comments from December 28, 1981 to January 15, 1982, and for reply comments from January 18, 1982 to February 5, 1982. NAB asserts that the additional time is needed in order to fully address the difficult substantive and procedural questions presented in the Commission's *Notice of Inquiry*.

2. Good cause having been shown, the request for extension of time will be granted pursuant to authority delegated to the General Counsel. See 47 CFR 0.251(b) (1980).

3. Accordingly it is hereby ordered That the Request for Extension of Time filed by the National Association of Broadcasters is hereby granted; that the time for filing comments in the above-captioned proceeding is extended to and including January 15, 1982, and that the time for filing reply comments is extended to and including February 5, 1982.

Stephen A. Sharp,
General Counsel.

[FR Doc. 81-35845 Filed 12-15-81; 8:45 am]

BILLING CODE 6712-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Countervailing Duty Investigation; Prestressed Concrete Steel Wire Strand From Spain: Correction

AGENCY: International Trade Administration, Commerce.

ACTION: Correction.

The incorrect Tariff classification was inadvertently cited in the *Federal Register* on December 2, 1981, entitled "Initiation of Countervailing Duty Investigation; Prestressed Concrete Steel Wire Strand from Spain" (46 FR 58543-44). The first paragraph under the heading "Scope of the Investigation" (page 58544) should read as follows:

Scope of the Investigation

The merchandise covered by this investigation is prestressed concrete steel wire strand. It is used to compress concrete in order to provide active resistance to loads in such items as girders, beams, pilings, and other building products. PC strand is currently classified under 642.1120 in the Tariff Schedule of the United States Annotated.

Dated: December 11, 1981.

Gary N. Horlick,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-35951 Filed 12-15-81; 8:45 am]
BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Receipt of Application for Permit To Take Marine Mammals; Southwest Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a

Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant:
 - a. Name: Southwest Fisheries Center (P77X).
 - b. Address: P.O. Box 271, La Jolla, California 92038.
2. Type of Permit: Scientific Research/Scientific Purposes.
3. Name and Number of Animals: Hawaiian Monk Seal (*Monachus schauinslandi*), 41.
4. Type of Take: Six pups to be captured, maintained, tagged, and released, up to 10 to be captured, measured, tagged, and released, and 25 bleached marked while asleep.
5. Location of Activity: Kure Atoll, Hawaiian Islands.
6. Period of Activity: March 1982.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, by January 15, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service,
3300 Whitehaven Street, N.W.,
Washington, D.C. and
Regional Director, National Marine
Fisheries Service, Southwest Region,

Federal Register

Vol. 46, No. 241

Wednesday, December 16, 1981

300 South Ferry Street, Terminal
Island, California 90731.

Dated: December 10, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals
and Endangered Species, National Marine
Fisheries Service.

[FR Doc. 81-35932 Filed 12-15-81; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Defense Communications Agency

Privacy Act of 1974; Amendment of a Systems of Records Notice

AGENCY: Defense Communications Agency, DOD.

ACTION: Notice of amendment to a systems of records notice.

SUMMARY: The Defense Communications Agency proposes to amend a notice for a systems of records subject to the Privacy Act of 1974. The specific changes to the notice being amended are set forth below.

DATES: This systems notice shall be amended as proposed without further notice on January 15, 1982, unless comments are received which would result in a contrary determination.

ADDRESSES: Any public comments, including written data, views or arguments concerning the amendments should be addressed to the System Manager identified in the particular record system notice concerned.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Whealen, General Counsel, Defense Communications Agency, Washington, D.C. 20305. Telephone 202/692-2009.

SUPPLEMENTARY INFORMATION: The Defense Communications Agency inventory of systems of records notices subject to the Privacy Act of 1974, Title 5, United States Code 552a (Pub. L. 93-479; 44 Stat. 1896, *et seq.*) has been published to date in the *Federal Register* at:

FR Doc. 79-37052 (44 FR 74443)

December 19, 1979

FR Doc. 81-897 (46 FR 6696) January 21, 1981

This change does not require an altered system report as prescribed by 5 U.S.C. 552a(o).

M. S. Healy,

*OSD Federal Register Liaison Officer,
Washington Headquarters Services,
Department of Defense.*

December 11, 1981.

Amendment

K240.01

SYSTEM NAME:

Personnel Security Investigative Dossier File (PSIDF)

SYSTEM LOCATION:

Delete entire present entry and insert:
"Office of the Chief, Security and Intelligence Division, Code 330, Headquarters, Defense Communications Agency (DCA), Decentralized Segment—Security Branch, Defense Communications Engineering Center, Director, Intelligence Security, Headquarters, Defense Nuclear Agency."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Delete entire present entry and insert:

STORAGE:

Automated records and stored on magnetic tapes, disks, microfiche, computer printouts, and/or punched cards. Manual records are stored in paper file folders, card files, and paper rosters.

RETRIEVABILITY:

Automated records are retrieved by individual's last name, social security number, conference title, and by type of badge issued. Manual records are retrieved by individual's last name.

SAFEGUARDS:

The computer facility and terminals are located in restricted areas accessible only to authorized personnel. Manual records and computer printouts are available only to authorized persons with an official need-to-know. Buildings employ security guards and/or intrusion detection systems.

RETENTION AND DISPOSAL:

Computer records on individuals are erased within one year from the date of termination of an individual's affiliation with the DCA. Personnel security files are generally destroyed upon termination of an individual's employment, assignment, or affiliation with DCA. Files which contain substantial security suitability information may be retained up to ten years. Manual records of conference

attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed. Security incident files are retained for two years unless they concern compromise of classified information, in which case they may be retained permanently.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Security and Intelligence Division, Code 330, Headquarters, Defense Communications Agency, Washington, D.C. 20305. Decentralized Segment—Chief, Security Branch, Defense Communications Engineering Center, Code R121, 1860 Wiehle Avenue, Reston, VA 22090.

K240.01

SYSTEM NAME:

Personnel Security Investigative Dossier File (PSIDF)

SYSTEM LOCATION:

Office of the Chief, Security and Intelligence Division, Code 330, Headquarters, Defense Communications Agency (DCA), Decentralized Segment—Security Branch, Defense Communications Engineering Center, Director, Intelligence Security, Headquarters, Defense Nuclear Agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, disks, microfiche, computer printouts, and/or punched cards. Manual records are stored in paper file folders, card files, and paper rosters.

RETRIEVABILITY:

Automated records are retrieved by individual's last name, social security number, conference title, and by type of badge issued. Manual records are retrieved by individual's last name.

SAFEGUARDS:

The computer facility and terminals are located in restricted areas accessible only to authorized personnel. Manual records and computer printouts are available only to authorized persons with an official need-to-know. Buildings employ security guards and/or intrusion detection systems.

RETENTION AND DISPOSAL:

Computer records on individuals are erased within one year from the date of termination of an individual's affiliation with the DCA. Personnel security files are generally destroyed upon

termination of an individual's employment, assignment, or affiliation with DCA. Files which contain substantial security suitability information may be retained up to ten years. Manual records of conference attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed. Security incident files are retained for two years unless they concern compromise of classified information, in which case they may be retained permanently.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Security and Intelligence Division, Code 330, Headquarters, Defense Communications Agency, Washington, D.C. 20305. Decentralized Segment—Chief, Security Branch, Defense Communications Engineering Center, Code R121, 1860 Wiehle Avenue, Reston, VA 22090.

[FR Doc. 81-35965 Filed 12-15-81; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the schedule and proposed agenda of a forthcoming meeting of the Annual Report Committee of the National Advisory Council on Indian Education. This also describes the functions of the Council. Notice of meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: Annual Report Committee Meeting: January 6, 1982, 9:00 a.m. to 5:00 p.m.; and, January 7, 1982, 9:00 a.m. to 5:00 p.m.

ADDRESS: Radisson Plaza Nashville, 2 Commerce Place, Nashville, Tennessee, 37239 (615) 244-8200.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Doss, Executive Director, National Advisory Council on Indian Education, 425 13th Street NW., Suite 326, Washington, D.C. 20004 (202) 376-8882.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act, Title IV

of Pub. L. 92-318, (20 U.S.C. 1221g). The Council is established to:

(1) Submit to the Secretary of Education a list of nominees for the position of Director, Indian Education Programs;

(2) Advise the Secretary of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (Pub. L. 81-874) and Section 810, Title VIII of the Elementary and Secondary Education Act of 1965 (as added by Title IV of Pub. L. 92-318 and amended by Pub. L. 93-380), and with respect to adequate funding thereof;

(3) Review applications for assistance under Title III of the Act of September 30, 1950 (Pub. L. 81-874), section 810 of Title VIII of the Elementary and Secondary Education Act of 1965 as amended and section 314 of the Adult Education Act (as added by Title IV of Pub. L. 92-318), and make recommendations to the Secretary with respect to their approval;

(4) Evaluate programs and projects carried out under any program of the Department of Education in which Indian children or adults can participate or from which they can benefit and, disseminate the results of such evaluations;

(5) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions and organizations to assist them in improving the education of Indian children;

(6) Assist the Secretary of Education in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950 (Pub. L. 81-874) as added by Title IV, Part A, of Pub. L. 92-318;

(7) Submit to the Congress not later than June 30 of each year a report of its activities, which shall include any recommendation it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, which report shall include a statement of the Council's recommendations to the Secretary with respect to the funding of any such programs; and,

(8) Be consulted by the Secretary of Education regarding the definition of term "Indian," as follows:

Sec. 453 [Title IV, Pub. L. 92-318]. For the purpose of this title, the term "Indian" means

any individual who (1) is a member of a tribe, band or other organized group of Indians, including those tribes, bands or groups terminated since 1940 and those recognized now or in the future by the State in which they reside or, who is a descendant, in the first or second degree, of any such member; or, (2) is considered by the Secretary of the Interior to be an Indian for any purpose; or, (3) is an Eskimo or Aleut or other Alaska Native; or, (4) is determined to be an Indian under regulations promulgated by the Secretary, after consultation with the National Advisory Council on Indian Education which regulations shall further define the term "Indian."

The Annual Report Committee Meeting will be open to the public. This meeting will be held at the Radisson Plaza Nashville, 2 Commerce Place, Nashville, Tennessee 37239 (615) 244-8200.

The proposed agenda includes discussion on the 1981 and 1982 Annual Report.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 425 13th Street NW., Suite 326, Washington, D.C. 20004.

Dated: December 11, 1981. Signed at Washington, D.C.

Michael P. Doss,
Executive Director, National Advisory Council on Indian Education.

[FR Doc. 81-35970 Filed 12-15-81; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the schedule and proposed agenda of a forthcoming meeting of the full Council of the National Advisory Council on Indian Education and Reauthorization Hearing of the Legislative, Rules and Regulations Committee of the Council. This also describes the functions of the Council. Notice of meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: Full Council Meeting: January 8, 1982, 9:00 a.m. to 5:00 p.m.; January 9, 1982, 9:00 a.m. to 5:00 p.m.; and, January 10, 1982, 9:00 a.m. to 5:00 p.m.

Reauthorization Hearing: January 11, 1982, 9:00 a.m. to 5:00 p.m.

ADDRESS: Radisson Plaza Nashville, 2 Commerce Place, Nashville, Tennessee, 37239 (615) 244-8200.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Doss, Executive Director, National Advisory Council on Indian Education, 425 13th Street, N.W., Suite 326, Washington, D.C. 20004 (202) 376-8882.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act, Title IV of Pub. L. 92-318, (20 U.S.C. 1221g). The Council is established to:

(1) Submit to the Secretary of Education a list of nominees for the position of Director, Indian Education Programs;

(2) Advise the Secretary of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (Pub. L. 81-874) and Section 810, Title VIII of the Elementary and Secondary Education Act of 1965 (as added by Title IV of Pub. L. 92-318 and amended by Pub. L. 93-380), and with respect to adequate funding thereof;

(3) Review applications for assistance under Title III of the Act of September 30, 1950 (Pub. L. 81-874), section 810 of Title VIII of the Elementary and Secondary Education Act of 1965 as amended and section 314 of the Adult Education Act (as added by Title IV of Pub. L. 92-318), and make recommendations to the Secretary with respect to their approval;

(4) Evaluate programs and projects carried out under any program of the Department of Education in which Indian children or adults can participate or from which Indian children or adults can benefit and, disseminate the results of such evaluations;

(5) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions and organizations to assist them in improving the education of Indian children;

(6) Assist the Secretary of Education in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950 (Pub. L. 81-874) as added by Title IV, Part A, of Pub. L. 92-318;

(7) Submit to the Congress not later than June 30 of each year a report of its activities, which shall include any recommendation it may deem necessary for the improvement of Federal education programs in which Indian

children and adults participate, or from which they can benefit, which report shall include a statement of the Council's recommendations to the Secretary with respect to the funding of any such programs; and,

(8) Be consulted by the Secretary of Education regarding the definition of term "Indian," as follows:

Sec. 453 [Title IV, Pub. L. 92-318]. For the purpose of this title, the term "Indian" means any individual who (1) is a member of a tribe, band or other organized group of Indians, including those tribes, bands or groups terminated since 1940 and those recognized now or in the future by the State in which they reside or, who is a descendant, in the first or second degree, or any such member; or, (2) is considered by the Secretary of the Interior to be an Indian for any purpose; or, (3) is an Eskimo or Aleut or other Alaska Native; or, (4) is determined to be an Indian under regulations promulgated by the Secretary, after consultation with the National Advisory Council on Indian Education which regulations shall further define the term "Indian."

The full Council meeting will be open to the public. This meeting will be held at the Radisson Plaza Nashville, 2 Commerce Place, Nashville, Tennessee 37239 (615) 244-8200.

The proposed agenda includes:

- (1) Executive Director's report
- (2) Action on previous meeting minutes
- (3) Committee discussions and reports
- (4) Review of NACIE FY 1982 budget
- (5) Plans for future NACIE activities
- (6) Regular Council business
- (7) Public testimony.

The Reauthorization Hearing will be open to the public. This hearing will be held at the Radisson Plaza Nashville, 2 Commerce Place, Nashville, Tennessee 37239 (615) 244-8200.

The proposed agenda includes:

Preliminary public hearing on the reauthorization of the Indian Education Act, Pub. L. 92-318.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 425 13th Street, N.W., Suite 326, Washington, D.C. 20004.

Dated: December 11, 1981. Signed at Washington, D.C.

Dr. Michael P. Doss,
Executive Director, National Advisory Council on Indian Education.

(PR Doc. #1-35909 Filed 12-15-81; 8:45 am)

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Boeing Engineering and Construction Company Proposed Contract Award

SUMMARY: In accordance with Department of Energy (DOE) Procurement Regulations, Title 41, Subpart 9-1.5409, published in the Federal Register on January 11, 1979 (44 FR 2556), DOE gives public notice that a contract is being awarded, recognizing the existence of potential organizational conflicts of interest, because this is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Owen Gormley, Office of Nuclear Fuel Cycle, Room B207/Germantown, Washington, DC 20545, Telephone (301) 353-4078.

Findings, Mitigation and Determination

Upon the basis of the following findings and determinations, the proposed contract described below is being awarded recognizing the existence of potential organizational conflicts of interest pursuant to the authority of 41 CFR 9-1.5409(a)(3).

Findings:

1. The Department of Energy has a continuing need for spent fuel and fuel cycle studies in support of U.S. Department of State initiatives in the furtherance of the Nation's international objectives. This includes participation by the Department in joint or multiple party endeavors with foreign countries either directly or under the aegis of international agencies such as the International Atomic Energy Agency. In order to respond to schedules established in international agreements and set by international bodies, the Department requires a contractor well versed in the Department's objectives, the Department's arrangements with other nations, and the Department's past activities in this area. It also requires a contractor with the flexibility to mount a significant effort with trained people on short notice to match the efforts by other nations.

2. Boeing and its team of subcontractors have been recognized as possessing the required combination of depth in engineering and breadth in the international arena for engineering studies and evaluation of institutional issues associated with licensing, financing, safeguards, and contracting arrangements necessary for an international spent fuel storage facility.

3. In accordance with 41 CFR 9-1.5405, Boeing and its subcontractors, International Energy Associates Limited,

Doub and Muntzing, and E. R. Johnson Associated provided statements disclosing relevant information concerning their interests related to the work performed by the agency and bearing on whether they have possible conflicts of interest (a) with respect to being able to render impartial, technically sound, and objective assistance or advice or (b) which may give them an unfair competitive advantage.

4. Based on an evaluation of the facts contained in the disclosure, that is the clientele and interests of Boeing and its subcontract team, it has been found that there could be potential or perceived conflicts of interest with regard to the work required by the Office of Nuclear Fuel Cycle in accordance with 41 CFR 9-1.5409(a). The work involved consists of the preparation of conceptual designs and cost estimates for fuel cycle and spent fuel management facilities in a variety of noncontinental U.S. locations including islands. In addition, the institutional arrangements for operating the facilities, including financial, licensing, contracting, and liability for multinational or international arrangements will be examined and included in reports on the whole endeavor. These reports are used by the Department of Energy and the Department of State and to support U.S. positions or to refute foreign positions in the international arena. To the extent that such designs and proposed institutional arrangements provided by the contractor could influence the cost of compliance by the nuclear industry with any international agreement, and to the extent that the work is performed by firms that are a part of the nuclear industry, or which obtain a significant portion of their revenues from nuclear industry clients, there exists a potential for real or apparent conflict of interest.

5. It is neither feasible nor appropriate to disqualify Boeing and its subcontractors from contract award in accordance with 41 CFR 9-1.5409(a)(1) because any firm which is involved in the nuclear industry would have the potential for an apparent conflict of interest. In addition since the studies deal with the international aspects of spent fuel management and ancillary fuel cycle issues, the potential impact on clients of the firms is limited. This is because the scope of work covers areas which are somewhat unique in terms of DOE interest, and there has been no private interest directly related to the scope. Consequently there are no firms or Government laboratories which have developed the required expertise under Government contract. Therefore, any

firm with the required expertise in any phase of the program would have developed it in the private sector and thus would have the same potential or perceived conflict of interest.

In addition, since Government interest in this area has been so limited no firm would agree to accept this task if it meant a reduction in its private sector business. Neither is it cost effective to allow development of the required expertise under Government sponsorship.

Furthermore, it is not possible to totally avoid the potential or perceived organizational conflicts of interest by inclusion of appropriate conditions in the resulting contract pursuant to 41 CFR 9-1.5409(a)(2).

Mitigation: Mitigation to the extent feasible under 41 CFR 9-1.5409(a)(3) will be obtained by independent staff review by DOE officials both in the program office and in International Affairs. In addition, there will be reviews by the Department of State and representatives of nations involved in the studies. The major activity in the contract is a U.S. and Japanese study which has an extensive and rigid management and review structure. Also, Boeing and its subcontractors will not participate in policymaking on management aspects in the areas of work being undertaken. In addition, the organizational conflicts of interest special clause entitled "Organizational Conflicts of Interest DOE PR 9-1.5408-2(b)" shall be included in the contract.

Determination: In light of the above Findings and Mitigations and in accordance with 41 CFR 9-1.5409(a)(3), the proposed contract award is in the best interest of the United States.

Dated: December 1, 1981.

Shelby T. Brewer,

Assistant Secretary for Nuclear Energy.

[FR Doc. 81-30944 Filed 12-15-81; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 81-02-NG]

Transcontinental Gas Pipe Line Corp., Algonquin Gas Transmission Co., and Texas Eastern Transmission Corp.; Amended Joint Application for Orders Authorizing the Importation of the Natural Gas From Canada.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice amended application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt

on October 28, 1981, of an amendment to the joint application previously filed by Transcontinental Gas Pipe Line Corporation (Transco) and Algonquin Gas Transmission Company (Algonquin) for authorization to import up to 305,882 Mcf of natural gas per day from Canada for a period of approximately 20 years. The instant amendment adds Texas Eastern Transmission Corporation (Texas Eastern) as a third joint applicant and allocates the volume for which import authorizations are requested into equal one-third shares.

The amended application is filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed no later than 4:30 p.m., December 31, 1981.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Gary, Division of Natural Gas, Economic Regulatory Administration, 2000 M Street, N.W., Room 6304, RG-13, Washington, D.C. 20461, (202) 653-3415

Patricia J. Neel, Office of General Counsel, Natural Gas and Mineral Leasing, 1000 Independence Avenue, S.W., Forrestal Building, Room 6E-042, Washington, D.C. 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: On December 16, 1980, Transco and Algonquin filed with ERA an application requesting authorization to import up to 305,882 Mcf of natural gas per day from Canada, with deliveries to commence on November 1, 1983, and to be shared equally by the two applicants, as more fully described in the Notice of Receipt of Application issued by ERA on January 12, 1981 (46 FR 5048, January 19, 1981). The purpose of the instant amended joint application is to reflect the addition of Texas Eastern as an applicant and to allocate the total import quantities in equal one-third shares to the three applicants.

The amended application, according to the applicants, also constitutes the initial filing before the Federal Energy Regulatory Commission (FERC), pursuant to Section 3 of the Natural Gas Act, seeking authority to import the subject natural gas at a specific point on the U.S.-Canada border near St. Stephen, New Brunswick and Calais, Maine. The proposed transporter of the natural gas is the New England States Pipelines Company (NESP), which on October 9, 1981, filed with the FERC an application under Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate

pipeline facilities and provide transportation services necessary to implement the proposed import. NESP, according to the applicants, is a Massachusetts General Partnership jointly owned by affiliates of Algonquin, Transco, and Texas Eastern. The applicants further state that the NESP partnership is in the process of being expanded to include, through a subsidiary, an Albertan corporation, NOVA. The NESP system would extend approximately 360 miles from the U.S.-Canada border to Burrillville, Rhode Island, where it would connect with the existing Algonquin pipeline system.

The joint applicants assert that there is a demonstrated need for the proposed importation of Canadian natural gas on each of their respective pipeline systems. The amended joint application states that, due to a decline in committed sources of supply, the proposed new volumes are necessary to provide the applicants greater assurance of meeting their customer's requirements and avoiding delivery curtailments.

Other Information

Any person wishing to become a party to the proceeding or to participate as a party in any conference or hearing which might be convened must file a petition of intervene, unless such a petition already has been filed in this docket in connection with the original application. Any person may file a protest with respect to this amended application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the amended application.

All protests and petitions to intervene must meet the requirements specified in 18 CFR 1.8 and 1.10. They should be filed with the Division of Natural Gas, Economic Regulatory Administration, Room 6304, RG-13, 2000 M Street, N.W., Washington, D.C. 20461. All protests and petitions to intervene must be filed no later than 4:30 p.m., December 31, 1981. An official service list will not be available until after the intervention period is closed.

A hearing will not be held unless a motion for a hearing is made by a party or person seeking intervention and granted by ERA, or if ERA on its own motion believes that a hearing is necessary or required. A person filing a motion for hearing should demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, ERA will provide notice to all parties and persons who petitions to intervene are pending.

A copy of the amended application noticed herein is available for public inspection and copying in the Division of Natural Gas Docket Room, Room 6304, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on December 7, 1981.

Rayburn Hanzlik,
Administrator, Economic Regulatory
Administration.

[FR Doc. 81-35843 Filed 12-15-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA82-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

December 10, 1981

Take notice that on December 1, 1981, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35630, tendered for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Thirty-Sixth Revised Sheet No. 3-A
Third Revised Sheet No. 3-B

These tariff sheets are proposed to become effective January 1, 1982.

Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the proposed changes in the rates of its suppliers, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Sun Gas Company. Alabama-Tennessee states that the changes have been made in conformity with the PGA and related provisions of its tariff.

The tariff sheets provide for the following rates:

Rate schedule	Rates after current adjustment
G-1 Demand	\$5.55

Rate schedule	Rates after current adjustment
Commodity	¹ \$10.96
SG-1: Commodity	¹ \$51.51
I-1 Commodity	¹ \$29.19

¹ Cents.

First Revised Sheet No. 3-B shows the incremental pricing surcharges which Alabama-Tennessee anticipates charging its customers for the six months commencing January 1, 1982.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 17, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-35666 Filed 12-15-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. C166-635-000, etc.]

ARCO Oil & Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To amend Certificates¹

December 11, 1981.

Take notice that each of the Applicants listed herein has filed an

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft. ³	Pressure base
C186-635-000, D, Nov. 23, 1981	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2813, Dallas, Texas 75211.	Lone Star Gas Company, Nellie District North, Stephens County, Oklahoma.	(1)	
C182-65-000, A, Nov. 25, 1981	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125.	Transcontinental Gas Pipe Line Corporation, Block A-158, Galveston Area, Offshore Texas.	(2)	14.72
C182-66-000 (C176-84), B, Nov. 27, 1981	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77001.	Texas Gas Transmission Corporation, Bayou Pigeon Field, Iberia Parish, Louisiana.	(3)	
C182-67-000 (C178-51), B, Nov. 30, 1981	Northwest Exploration Company, P.O. Box 1526, Salt Lake City, Utah 84110.	Northwest Pipeline Corporation, Airport Prospect, Sweetwater County, Wyoming.	(4)	
C182-69-000, A, Nov. 30, 1981	Mobil Producing Texas & New Mexico, Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77048.	Transcontinental Gas Pipe Line Corporation, High Island Block A-471 Field, South Addition, Federal Offshore Texas.	(5)	14.72
C182-70-000, A, Nov. 30, 1981	do	Southern Natural Gas Company, Mustang Island Area, Block 758, Federal Offshore Texas.	(6)	14.72
C182-71-000 (C165-1249), B, Dec. 1, 1981	Husky Oil Company, 600 South Cherry Street, Denver, Colorado 80222.	Cody Gas Company, Ralston Field, Park County, Wyoming.	(7)	
C182-72-000, E, Dec. 2, 1981**	TXO Production Corp. (Succ. to Texas Oil & Gas Corp.), 2700 Fidelity Union Tower, Dallas, Texas 75201.	Transwestern Pipeline Company, Lipscomb County, Texas.	(8)	14.85
C182-73-000, E, Dec. 2, 1981**	do	Panhandle Eastern Pipe Line Company, Baca County, Colorado.	(9)	14.85
C182-74-000, E, Dec. 2, 1981**	do	Panhandle Eastern Pipe Line Company, Baca County, Colorado.	(9)	14.85
C182-75-000, E, Dec. 2, 1981**	do	El Paso Natural Gas Company, Crockett County, Texas.	(10)	14.85
C182-76-000, E, Dec. 2, 1981**	do	Panhandle Eastern Pipe Line Company, Ellis County, Oklahoma.	(11)	14.85
C182-77-000, E, Dec. 2, 1981**	do	Arkansas Louisiana Gas Company, Sooner Trend Area, Garfield County, Oklahoma.	(12)	14.85
C182-78-000, E, Dec. 2, 1981**	do	Colorado Interstate Gas Company, Carbon and Sweetwater Counties, Wyoming.	(13)	14.85
C182-79-000, E, Dec. 2, 1981**	do	Northern Natural Gas Company, Yates Formation, Gaines County, Texas.	(14)	14.85
C182-80-000, E, Dec. 2, 1981**	do	Florida Gas Transmission Company, McGill Ranch Field Area, Kenedy County, Texas.	(15)	14.85
C182-81-000, E, Dec. 2, 1981**	do	Northern Natural Gas Company, Reagan County, Texas.	(16)	14.72
C182-82-000, E, Dec. 2, 1981**	do	Florida Gas Transmission Company, McGill Ranch Field Area, Kenedy County, Texas.	(17)	14.85
C182-83-000, E, Dec. 2, 1981**	do	Northern Natural Gas Company, Morrow Formation, Beaver County, Oklahoma.	(18)	14.85
C182-84-000, E, Dec. 2, 1981**	do	Arkansas Louisiana Gas Company, Arkoma Area, LeFlore County, Oklahoma.	(19)	14.85
C182-85-000, E, Dec. 2, 1981**	do	Michigan Wisconsin Pipe Line Company, Major County, Oklahoma.	(20)	14.85
C182-86-000, E, Dec. 2, 1981**	do	Florida Gas Transmission Company, McGill Ranch Field Area, Kenedy County, Texas.	(21)	14.85
C182-87-000, E, Dec. 2, 1981**	do	Panhandle Eastern Pipe Line Company, Woods County, Oklahoma.	(22)	14.85
C182-88-000, E, Dec. 2, 1981**	do	Arkansas Oklahoma Gas Corporation, Sebastian County, Arkansas.	(23)	14.85
C182-89-000, E, Dec. 2, 1981**	do	Columbia Gas Transmission Corporation, Wharton County, Texas.	(24)	14.85
C182-90-000, E, Dec. 2, 1981**	do	Panhandle Eastern Pipe Line Company, Morrow Formation, Beaver County, Oklahoma.	(25)	14.85
C182-91-000, E, Dec. 2, 1981**	do	Natural Gas Pipeline Company of America, Cemetery Morrow Field, Eddy County, New Mexico.	(26)	14.65
C182-92-000, E, Dec. 2, 1981**	do	Transwestern Pipeline Company, Lipscomb County, Texas.	(27)	14.65
C182-93-000, E, Dec. 2, 1981**	do	Northern Natural Gas Company, Lipscomb County, Texas.	(28)	14.65
C182-94-000, E, Dec. 2, 1981**	do	Transcontinental Gas Pipe Line Corporation, Dunn Field, Live Oak County, Texas.	(29)	14.85
C182-95-000, E, Dec. 2, 1981**	do	Michigan Wisconsin Pipe Line Company, Harper County, Oklahoma.	(30)	14.85
C182-96-000, E, Dec. 2, 1981**	do	Northern Natural Gas Company, Beaver County, Oklahoma.	(31)	14.85
C182-97-000, E, Dec. 2, 1981**	do	Michigan Wisconsin Pipe Line Company, Harper County, Oklahoma.	(32)	14.85
C182-98-000, E, Dec. 2, 1981**	do	Texas Eastern Transmission Corporation, Southwest Speaks Field, Lavaca County, Texas.	(33)	14.85
C182-99-000, E, Dec. 2, 1981**	do	El Paso Natural Gas Company, Cisco Formation, Eddy County, New Mexico.	(34)	14.72
C182-100-000, E, Dec. 2, 1981**	do	Texas Eastern Transmission Corporation, Yearly Field, Kieberg County, Texas.	(35)	14.85
C182-101-000, E, Dec. 2, 1981**	do	Arkansas Louisiana Gas Company, Arkoma Area, LeFlore County, Oklahoma.	(36)	14.85
C182-102-000, E, Dec. 2, 1981**	do	Colorado Interstate Gas Company, Greenwood Field, Baca County, Colorado.	(37)	14.85
C182-103-000, E, Dec. 2, 1981**	do	Transcontinental Gas Pipe Line Corporation, East Yoward Field, Bee County, Texas.	(38)	14.85
C182-104-000, E, Dec. 2, 1981**	do	Northern Natural Gas Company, Morrow Formation, Woodward County, Oklahoma.	(39)	14.85
C182-105-000, E, Dec. 2, 1981**	do	Columbia Gas Transmission Corporation, Irion County, Texas.	(40)	14.85
C182-106-000, E, Dec. 2, 1981**	do	Northern Natural Gas Company, Ellis County, Oklahoma.	(41)	14.85
C182-107-000, E, Dec. 2, 1981**	do	Transwestern Pipeline Company, Eddy County, New Mexico.	(42)	14.85
C182-108-000, E, Dec. 2, 1981**	do	Arkansas Louisiana Gas Company, Arkoma Area, LeFlore County, Oklahoma.	(43)	14.85
C182-109-000, E, Dec. 2, 1981**	do	Arkansas Louisiana Gas Company, Arkoma Area, Sequoyah County, Oklahoma.	(44)	14.85
C182-110-000, E, Dec. 2, 1981**	do	Michigan Wisconsin Pipe Line Company, Laverne Field, Harper County, Oklahoma.	(45)	14.85
C182-111-000, E, Dec. 2, 1981**	do	Northern Natural Gas Company, Mississippian Chester Formation, Woods County, Oklahoma.	(46)	14.85

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft. ³	Pressure base
C182-112-000, E. Dec. 2, 1981**	do	Transcontinental Gas Pipe Line Corporation, West Papale Field, San Patricio County, Texas.	(**)	14.65
C182-113-000, E. Dec. 2, 1981**	do	Panhandle Eastern Pipe Line Company, Chester Formation, Woods County, Oklahoma.	(**)	14.65
C182-114-000, E. Dec. 2, 1981**	do	Columbia Gas Transmission Corporation, Eddy County, New Mexico.	(**)	14.73
C182-115-000, E. Dec. 2, 1981**	do	Arkansas Louisiana Gas Company, West Cedars Field, LeFlore County, Oklahoma.	(**)	14.65
C182-116-000, E. Dec. 2, 1981**	do	Panhandle Eastern Pipe Line Company, Red Fork and Mississippian Formations, Woods County, Oklahoma.	(**)	14.65
C182-117-000, E. Dec. 2, 1981**	do	Cities Service Gas Company, Barber County, Kansas.	(**)	14.65
C182-118-000, E. Dec. 2, 1981**	do	Northern Natural Gas Company, Loving County, Texas.	(**)	14.65
C182-119-000, E. Dec. 2, 1981**	do	Texas Eastern Transmission Corporation, Waskon Field Area, Harrison County, Texas.	(**)	14.65

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

* Leases sold and assigned to C & Y Casing Pulling Co. effective October 1, 1972.

** Applicant is willing to accept the applicable price and the escalations thereto and is concurrently filing herewith an initial billing statement (Schedule 9507) to cover collection of the price provided by Section 102 of the NGPA.

† The leases in which Gulf acquired an interest, as successor to the Conard Oil and Gas Company, expired and were released to landowner prior to the date of cancellation of the contract.

‡ The Black Butte No. 1 well which was the only source of gas from the acreage dedicated to the Gas Purchase Contract of September 16, 1977 was plugged and abandoned on November 12, 1978.

§ Applicant agrees to accept an initial rate determined in accordance with the Natural Gas Policy Act of 1978, Part 271, Subpart B, Section 102(d).

¶ Substantially depleted state of casinghead gas production, removal of corroded gathering line.

‡ Applicant is filing under Gas Purchase Contract dated October 3, 1978.

‡ Applicant is filing under Gas Purchase Contract dated August 31, 1977.

‡ Applicant is filing under Gas Purchase Contract dated September 1, 1977.

‡ Applicant is filing under Gas Purchase Contract dated March 4, 1981.

‡ Applicant is filing under Gas Purchase Contract dated June 6, 1978.

‡ Applicant is filing under Gas Purchase Contract dated June 15, 1978.

‡ Applicant is filing under Gas Purchase Contract dated September 15, 1977.

‡ Applicant is filing under Gas Purchase Contract dated September 29, 1978.

‡ Applicant is filing under Gas Purchase Contract dated September 26, 1978.

‡ Applicant is filing under Gas Purchase Contract dated July 5, 1978.

‡ Applicant is filing under Gas Purchase Contract dated June 5, 1978.

‡ Applicant is filing under Gas Purchase Contract dated August 13, 1978.

‡ Applicant is filing under Gas Purchase Contract dated October 13, 1977.

‡ Applicant is filing under Gas Purchase Contract dated August 28, 1978.

‡ Applicant is filing under Gas Purchase Contract dated April 7, 1978.

‡ Applicant is filing under Gas Purchase Contract dated January 25, 1978.

‡ Applicant is filing under Gas Purchase Contract dated November 1, 1978.

‡ Applicant is filing under Gas Purchase Contract dated July 17, 1978.

‡ Applicant is filing under Gas Purchase Contract dated June 2, 1978.

‡ Applicant is filing under Gas Purchase Contract dated July 1, 1978.

‡ Applicant is filing under Gas Purchase Contract dated October 2, 1978.

‡ Applicant is filing under Gas Purchase Contract dated July 31, 1978.

‡ Applicant is filing under Gas Purchase Contract dated September 12, 1978.

‡ Applicant is filing under Gas Purchase Contract dated March 13, 1978.

‡ Applicant is filing under Gas Purchase Contract dated January 10, 1978.

‡ Applicant is filing under Gas Purchase Contract dated July 7, 1978.

‡ Applicant is filing under Gas Purchase Contract dated July 25, 1978.

‡ Applicant is filing under Gas Purchase Contract dated June 10, 1978.

‡ Applicant is filing under Gas Purchase Contract dated August 14, 1978.

‡ Applicant is filing under Gas Purchase Contract dated September 29, 1977.

‡ Applicant is filing under Gas Purchase Contract dated October 7, 1977.

‡ Applicant is filing under Gas Purchase Contract dated November 7, 1977.

‡ Applicant is filing under Gas Purchase Contract dated November 21, 1977.

‡ Applicant is filing under Gas Purchase Contract dated January 5, 1978.

‡ Applicant is filing under Gas Purchase Contract dated August 16, 1978.

‡ Applicant is filing under Gas Purchase Contract dated September 21, 1978.

‡ Applicant is filing under Gas Purchase Contract dated July 19, 1978.

‡ Applicant is filing under Gas Purchase Contract dated July 10, 1978.

‡ Applicant is filing under Gas Purchase Contract dated December 8, 1977.

‡ Applicant is filing under Gas Purchase Contract dated June 6, 1977.

‡ Applicant is filing under Gas Purchase Contract dated September 5, 1978.

‡ Applicant is filing under Gas Purchase Contract dated May 8, 1978.

§ As of September 1, 1981 TXO Production Corp., a wholly owned subsidiary of Texas Oil & Gas Corp., succeeded to all rights and obligations of Texas Oil & Gas Corp., under said contract.

[PR Doc. 81-35857 Filed 12-15-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-1-12-000]

Distrigas Corp. and Distrigas of Massachusetts Corp.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

December 10, 1981.

Take notice that Distrigas Corporation (Distrigas) on November 30, 1981 tendered for filing Eighth Revised Sheet No. 1 to its FERC Gas Tariff and Distrigas of Massachusetts Corporation (DOMAC) on the above date tendered for filing Eighth Revised Sheet No. 3A.

Eighth Revised Sheet No. 1 and Eighth Revised Sheet No. 3A are being filed pursuant to Distrigas' and DOMAC's purchased LNG cost adjustment

provision set forth in their respective tariffs. The Distrigas rate change is being filed to reflect in its sales rate to DOMAC a redetermination (decrease) of the price paid for the purchase of LNG from its supplier SONATRACH in accordance with the Distrigas-SONATRACH Agreement for Sale and Purchase of Liquefied Natural Gas together with demurrage and amortization over the six-month period, January 1, 1982 through June 30, 1982, of the balance of the unrecovered purchased LNG cost account.

The DOMAC rate change is being filed to reflect the Distrigas rate change in DOMAC's rates for resale to its distribution customer companies and the amortization over the six-month period,

January 1, 1982 through June 30, 1982, of the balance in DOMAC's unrecovered purchased LNG cost account and the GRI Surcharge.

Distrigas and DOMAC request that the proposed tariff sheets become effective January 1, 1982 to coincide with the change in LNG costs from SONATRACH.

A copy of this filing is being served on all affected parties and interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's Rules of

Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 17, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 35856 Filed 12-15-81; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5644-000]

Energenics Systems, Inc.; Application for Preliminary Permit

December 11, 1981.

Take notice that Energenics Systems, Inc. (Applicant) filed on November 13, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5644 to be known as the Horsetooth Project located on Horsetooth Reservoir and the Charles Hansen Canal near Ft. Collins, Larimer County, Colorado. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas Clark, Jr., President, Energenics Systems, Inc., 1727 Q Street, N.W., Washington, D.C. 20009.

Project Description—The proposed project would utilize the existing Horsetooth Dam and Reservoir and the Charles Hansen Canal, both owned and operated by the U.S. Department of the Interior, Bureau of Reclamation. Applicant would utilize the existing outlet conduit at the dam and construct a powerhouse containing two turbine-generator units with a total rated capacity of 3 MW and a 3-mile long transmission line. The project would generate up to 14,000,000 kWh annually. Energy produced at the project would be sold to Platt River Power Authority or the Western Area Power Authority.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under this preliminary permit would include economic evaluation, engineering plans, and an environmental assessment. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the work to be performed

under this preliminary permit would cost \$35,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before March 18, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before February 16, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before February 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the project number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing,

Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-35859 Filed 12-15-81; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RA82-6-000]

Farmer's Union Central Exchange, Inc. (CENEX); Filing of Petition for Review Under 42 U.S.C.D 7194

December 11, 1981.

Take notice that Farmer's Union Central Exchange, Inc. (CENEX) on November 25, 1981, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before December 28, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before December 28, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room

1000, 825 North Capitol St., N.E.,
Washington, D.C. 20426.
Kenneth F. Plumb,
Secretary.

[FR Doc. 81-35660 Filed 12-15-81; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5549-000]

Hydro Resource Co., Application for Preliminary Permit

December 11, 1981.

Take notice that Hydro Resource Company (Applicant) filed on October 21, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5549 to be known as the Lena Creek Project located on Lena Creek in Mason/Jefferson County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Agent, P.O. Box 485, Lynden, Washington 98264.

Project Description—The proposed project would consist of: (1) a diversion structure; (2) a 5,500-foot long, 36-inch diameter diversion conduit; (3) a 1,500-foot long, 36-inch diameter penstock; (4) a powerhouse with a total rated capacity of 4,000 kW; and (5) a 12,000-foot long, 55-kV transmission line from the powerhouse to an existing transmission line. The applicant estimates that the average annual energy output would be 28 million kWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which it would conduct technical, environmental and economic studies and also prepare a FERC license application. New roads would be needed to conduct these studies. The applicant estimates that the cost of undertaking these studies would be \$150,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before February 16, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption

must be submitted to the Commission on or before February 16, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than April 15, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.6 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before February 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-35661 Filed 12-15-81; 8:46 am]
BILLING CODE 6717-01-M

[Project No. 5590-000]

Mid-Atlantic Energy Corp., Application for Preliminary Permit

December 11, 1981.

Take notice that Mid-Atlantic Energy Corporation, Inc. (Applicant) filed on November 2, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5590 to be known as the Culor Hydropower Project located on the Rapidan River near the town of Rapidan in the Counties of Orange and Culpeper in the State of Virginia. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ms. Barbara Youngblood, Project Director, Mid-Atlantic Energy Corporation, Inc., 10807 Beach Mill Road, Great Falls, Virginia 22066.

Project Description—The proposed project would consist of: (1) an existing concrete dam 175 feet long and 25 feet high; (2) the proposed construction of an intake, a 32-foot long penstock, and a 70-foot long tailrace; (3) the proposed construction of a powerhouse with the installation of a 1.0 MW turbine and generator unit; (4) an existing reservoir with a gross storage capacity of approximately 325 acre feet and a negligible surface area; (5) a proposed 100-foot long distribution line interconnecting with a Virginia Electric Power Company line near the proposed project; and (6) appurtenant facilities. The Applicant estimates the annual energy generation to be 4.0 GWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with the consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be \$50,000.

Competing Applications—Anyone desiring to file a competing application

for preliminary permit must submit to the Commission, on or before March 18, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before February 16, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before February 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must

also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-35862 Filed 12-15-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5601-000]

Oroville-Wyandotte Irrigation District; Application for Preliminary Permit

December 11, 1981.

Take notice that Oroville-Wyandotte Irrigation District (Applicant) filed on November 3, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5601 to be known as the French Creek Power Project located on French Creek and the Little North Fork Creek and partially on United States lands within the Plumas National Forest, in Butte County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Steven C. Onken, Power Superintendent, Oroville-Wyandotte Irrigation District, P.O. Box 117, Forbestown, California 95941.

Project Description—The proposed project would consist of: (1) a 20-foot high diversion dam across Little North Fork Creek, at a point approximately 15,000 feet upstream of the Little North Fork Creek and Middle Fork Feather River confluence diverting water into; (2) a 8,000-foot long tunnel, leading to Peavine Creek, a tributary of French Creek; (3) a 105-foot high, 1,500-foot long dam across French Creek, forming; (4) a reservoir with a gross storage capacity of 32,000 acre-feet; (5) a 6,000-foot long tunnel/penstock leading to; (6) a powerhouse containing generating units with a total rated capacity of 10,000 kW; and (7) appurtenant facilities. Applicant estimates that the average annual energy output would be 104 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month preliminary permit to prepare a project report, including preliminary designs, and results of geological, hydrological, environmental and economic feasibility studies. Applicant has indicated that: (a) No new roads would be required for conducting the studies; and (b) test borings would be done in areas which are clear of vegetation, boring holes would be backfilled, and the ground

surface reconditioned to the extent possible.

The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Forest Service and other Federal, State, and local agencies, preparing a license application, conducting final field surveys and preparing designs is estimated by the Applicant to be \$100,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before February 16, 1982, the competing application itself or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before February 16, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than April 15, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before February 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all

capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-35863 Filed 12-15-81; 8:45 am]

BILLING CODE 6717-01-M

Project Nos. 5533-000, 5625-000]

T. Owen, F. Castagna, R. Bean, and Modesto Irrigation District; Application for Preliminary Permit

December 8, 1981.

Take notice that T. Owen, F. Castagna, R. Bean and Modesto Irrigation District (Applicants) filed on October 20, 1981, and November 9, 1981, applications for preliminary permits [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Projects Nos. 5533 (initial application) and 5629 (competing application) to be known as the Sand and Brown's Power Project located on Sand Creek and Brown's Creek in Madera County, California. The projects lie within the Sierra National Forest. The applications are on file with the Commission and are available for public inspection. Correspondence with either Applicant should be directed to: Teddy Owen, Fred Castagna, Richard Bean, 1646 East Street, Redding, California 96001, and/or Mr. A. Lee DeLano, Modesto Irrigation District, 1231 11th Street, P.O. Box 4060, Modesto, California 95352.

Project Description—The proposed Project No. 5533 would consist of: (1) two 5-foot high diversion structures with negligible storage; (2) diversion conduits or channels 5,610 and 1,080 feet long; (3) penstocks 5,740 and 3,290 feet long; (4) a

powerhouse containing one or a combination of turbine generators with 3,651 kW capacity and 9.14 GWh annual energy production; (5) transmission line; and (6) appurtenant facilities. The proposed Project No. 5625 would consist of: (1) two 5-foot high, 185-foot long diversion structures; (2) diversion conduits, 48-inch diameter, 5,610-foot long, 24-inch diameter, 1,080-foot long; (3) penstocks 48 and 24 inch diameter, 3,290 feet long; (4) a powerhouse containing one or more generating units with a capacity of 3,660 kW and 9.14 million kWh annual energy production; and (5) a transmission line. Generated energy will be distributed through an intertie with Pacific Gas and Electric System.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicants seek issuance of a preliminary permit for a period of 36 and 24 months, respectively, during which time the firms plan engineering, economic and environmental studies, to ascertain project feasibility and to support their application for a license to construct and operate the project. The estimated cost of these actions is \$102,000 for Project No. 5533 and \$75,000 for Project No. 5625.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before February 12, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981)].

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before February 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 12, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be

obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before February 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-35864 Filed 12-15-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP76-136-019, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

December 11, 1981.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may

submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory

Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before December 24, 1981. Copies of the respective filings are on file with the

Commission and available for public inspection.
Kenneth F. Plumb,
Secretary.

Filing Date	Company	Docket No.	Type Filing
Nov. 18, 1981	Transcontinental Gas Pipe Line Corporation	RP76-136-019	Report
Nov. 23, 1981	Southern Natural Gas Company	RP81-105-008	LFUT Report
Nov. 25, 1981	Florida Gas Transmission Company	RP79-16-005	Report
Nov. 30, 1981	Eastern Shore Natural Gas Company	RP76-136	Petition
Nov. 30, 1981	Great Lakes Gas Transmission Company	RP80-134	Report
Nov. 30, 1981	South Georgia Natural Gas Company	RP77-32	Report
Dec. 1, 1981	Eastern Shore Natural Gas Company	RP82-11-001	Report
Dec. 1, 1981	Eastern Shore Natural Gas Company	RP82-11-002	Report
Dec. 3, 1981	Consolidated Gas Supply Corporation	RP72-157-049	Report
Dec. 3, 1981	Southern Natural Gas Company	RP81-105-009	LFUT Report
Dec. 3, 1981	Texas Gas Transmission Corporation	RP81-12-002	LFUT Report

[FR Doc 81-35965 Filed 12-15-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5666-000]

Town of Greenfield; Application For Preliminary Permit

December 11, 1981.

Take notice that the Town of Greenfield (Applicant) filed on November 17, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5666 to be known as the Greenfield Project located on the Green River in the Town of Greenfield, Franklin County, Massachusetts. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Michael Pill, New England Energy Development Systems, Inc., 109 Main Street, Amherst, Massachusetts 01002.

Project Description—The proposed project would consist of two developments described as follows:

(A) The Green One Development would consist of: (1) an existing dam comprised of a 147.5 foot long earth dike and a 100-foot long, 17-foot high concrete-ogee-type spillway dam; (2) a reservoir with negligible usable storage capacity; (3) a new 90-foot long penstock of undetermined composition and diameter; (4) a new powerhouse containing two turbine-generators with a total rated capacity of 71 kW; and (5) appurtenant facilities. Green One would generate up to 336,000 kWh annually.

(B) The Green Two Development would consist of: (1) an existing 135-foot long, 12-foot high, concrete-ogee-type spillway dam; (2) a reservoir with negligible usable storage capacity; (3) a new 50-foot long penstock of undetermined composition and diameter; (4) a new powerhouse containing three turbine-generators with

a total rated capacity of 106 kW; and (5) appurtenant facilities. Green Two would generate up to 564,000 kWh annually.

Both dams are owned by the Applicant. Energy produced at the project would be sold to Northeast Utilities Service Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under this preliminary permit would include engineering plans, and an environmental assessment. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for exemption or license to construct and operate the project. Applicant estimates that the work to be performed under this preliminary permit would cost \$15,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before March 18, 1982, the competing application itself [see: 18 CFR 4.30 et. seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before February 16, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit

comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before February 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-35866 Filed 12-15-81; 8:45 am]

BILLING CODE 5717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-251; PH-FRL-2002-2]

E M Industries, Inc.; Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions by E M Industries Inc. proposing exemptions from the requirement of tolerances for residues of the inert solvents *N*-methylpyrrolidone and dimethylformamide in or on almonds and apples.

ADDRESS: Written comments to: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number "[PF-251]" and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby (703-557-1900).

SUPPLEMENTARY INFORMATION: E M Industries Inc. Plant Protection Division, 5 Skyline Drive, Hawthorne, NY 10532, has submitted petitions (PP 2F2591) and (PP 2F2592) to EPA. The petitions propose that 40 CFR Part 180 be amended by establishing exemptions from the requirement of tolerances for residues of the inert solvents *N*-methylpyrrolidone (PP 2F2591) and dimethylformamide (PP 2F2592) for blossom use on almonds and apples.

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136))

Dated: December 2, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35330 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[PP 0G2291/T336; PH-FRL-2002-3]

Oryzalin; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the temporary tolerance for residues of the herbicide oryzalin, (3,5-dinitro-N⁴, N⁴-dipropylsulfanilamide), in or on the raw agricultural commodity white potatoes at 0.1 part per million (ppm).

DATE: This tolerance expires October 5, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the Federal Register of October 10, 1980 (45 FR 67452) announcing the establishment of a temporary tolerance for residues of the herbicide oryzalin, (3,5-dinitro-N⁴, N⁴-dipropylsulfanilamide), in or on the raw agricultural commodity white potatoes at 0.1 ppm. This tolerance has been extended in response to a pesticide petition (PP 0G2291), submitted by Elanco Products Co., PO Box 1750, Indianapolis, IN 46206.

This temporary tolerance is to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permits (1471-EUP-70) and (1471-EUP-71) which are being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Elanco Products Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to

any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires October 5, 1982. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerance. This tolerance may be revoked if the experimental use permits are revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted temporary tolerances from the OMB review requirements of executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: December 2, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35330 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[PP 1G2441/T337; PH-FRL-2002-4]

Tralomethrin; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the insecticide tralomethrin, [1R(1S*)3(RS*)]-2,2-dimethyl-3-[1,2,2,2-tetrabromoethyl]cyclopropanecarboxylic acid- α -cyano (3-phenoxyphenyl)methyl ester, in or on the raw agricultural commodity

cottonseed at 0.02 part per million (ppm).

DATE: This temporary tolerance expires July 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Franklin Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2690).

SUPPLEMENTARY INFORMATION:

American Hoechst Corporation, Route 202-206 North, Somerville, NJ 08876, has requested the establishment of a temporary tolerance for residues of the insecticide tralomethrin, [1R[1(S*)3(RS*)]]-2,2-dimethyl-3-(1,2,2,2-tetrabromoethyl)cyclopropanecarboxylic acid- α -cyano (3-phenoxyphenyl)methyl ester, in or on cottonseed at 0.02 ppm.

This temporary tolerance will permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 8340-EUP-6 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Hoechst Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires July 1, 1982. Residues not in excess of 0.02 ppm remaining in or on cottonseed after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or

scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this temporary tolerance from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, [21 U.S.C. 346a(j)])

Dated: December 1, 1981.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35337 Filed 12-15-81; 8:45 am]

BILLING CODE 6580-32-M

[PP 5G1590/T335; PH-FRL-2002-5]

Tricyclazole on Rice; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the fungicide tricyclazole 5-methyl-1,2,4-triazolo (3,4-*b*)-benzothiazole and its metabolite 1,2,4-triazolo (3,4-*b*)-benzothiazole-5-methanol, in or on the raw agriculture commodities rough rice (rice grain with hulls) at 8.0 parts per million (ppm); liver and kidney of cattle, swine, horses, goats, poultry and sheep at 0.3 ppm; and milk and eggs at 0.03 ppm.

DATE: These tolerances expire December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the Federal Register of August 25, 1980 (45

FR 56432) announcing the establishment of temporary tolerances for the combined residues of the fungicide tricyclazole 5-methyl-1,2,4-triazolo (3,4-*b*)-benzothiazole and its metabolite 1,2,4-triazolo (3,4-*b*)-benzothiazole-5-methanol, in or on the raw agricultural commodities rough rice (rice grain with hulls) at 8.0 ppm; liver and kidney of cattle, swine, horses, goats, poultry and sheep at 0.3 ppm; and milk and eggs at 0.03 ppm. These tolerances have been extended in response to a pesticide petition (PP 5G1590), submitted by Elanco Products Co., P.O. Box 1750, Indianapolis, IN 46206.

These temporary tolerances are to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit (1471-EUP-60) which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the fungicide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active fungicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Elanco Products Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the fungicide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this fungicide indicates that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that these temporary tolerances are not a "Major"

rule and therefore do not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted these temporary tolerances from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

[Sec. 408(j), 66 Stat. 516, (21 U.S.C. 346a(j))]

Dated: December 2, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc 81-35336 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-66086; PH-FRL 20054]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the name of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 8(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Production of these products after the

effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: January 15, 1982.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St. SW., Washington, DC 20460 (202-426-2610).

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Process Coordination Branch (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 516, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7121).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
100-555	Meloran 50 WP Herbicide	Ciba-Geigy Corp., P.O. Box 11422, Greensboro, NC 27409	Mar. 20, 1969
109-583	Meloran Technical	do	May 28, 1974
148-814	De-Pestex Dibrom-Kelthane-Folpet 4-4-7.5	Thompson-Hayward Chemical Company, P.O. Box 2383, Kansas City, KS 66110	Apr. 23, 1968
149-879	Ethion-Thiodan-43	do	Apr. 4, 1969
148-1103	Ethion 4 Nisobol Miticide Insecticide	do	Apr. 21, 1972
239-1316	Ortho Ethion 25 Wettable	Chovron Chemical Company, 940 Hensley Street, Richmond, CA 94801	Apr. 22, 1959
239-1350	Ortho Ethion 4 Dust	do	May 20, 1958
239-1359	Ortho Ethion 4 Emulsive	do	May 25, 1959
239-1417	Dibrom Sulfur 4-30 Dust	do	Sept. 18, 1959
239-1432	Ortho Ethion Dormant Oil Combination	do	Nov. 23, 1959
239-1444	Volck Supreme Ethion Combination	do	Jan. 14, 1960
239-1585	Volck 70 Supreme Ethion Combination	do	Mar. 22, 1961
239-2144	Orthocide Dibrom Sevin Sulfur 5-3-7.5-25 Dust	do	Oct. 28, 1965
239-1624	Dibrom Sevin 2-5 Dust	do	Apr. 22, 1959
239-1780	Dibrom Thiodan Sulfur 2-3 Dust	do	Nov. 18, 1962
239-1835	Dibrom Toxaphene 3-10 Dust	do	June 13, 1963
239-1987	Dibrom Thiodan 3-3 Dust	do	Sept. 4, 1964
239-2051	Dibrom Thiodan 4-4 Dust	do	Dec. 2, 1964
239-2054	Dibrom Thiodan Sulfur 4-4-30 Dust	do	Dec. 11, 1964
239-2145	Dibrom Sulfur 4-10	do	Oct. 28, 1965
239-2146	Dibrom Zinc Coposil 4-35 Dust	do	Oct. 28, 1965
239-2151	Dibrom Phosphamidon 3-1.5 Dust	do	Oct. 26, 1965
239-1995	Ortho Cotton Special Dust	do	Sept. 11, 1964
239-2283	Ortho Ethion Sevin 4-5 Dust	do	Nov. 4, 1968
279-1958	Aqua Delnav 8	FMC Corporation, 2000 Market Street, Philadelphia, PA 19103	July 18, 1962
279-2351	Botran 6 Kolodust 25 Dibrom 4 Dust	do	Nov. 29, 1965
1202-297	PureGro Ethion-Dibrom Sulfur 4-4-25	Pure Gro Company, 1052 West Sixth Street, Los Angeles, CA 90017	Feb. 13, 1975
1388-208	Unico Malathion Grain Spray Premium Grade	Universal Cooperative, Inc., 3001 Metro Drive, Suite 500, Minneapolis, MN 55420	Feb. 5, 1959
1553-94	MOMAR Ben-Gone	Momar, Inc., 1830 Ellsworth Industrial Dr., NW, Atlanta, GA 30318	Mar. 19, 1973
1574-26	Stanley Insect Repellent	Stanley Home Products, Inc., 333 Western Avenue, Westfield, MA 10005	Feb. 18, 1971
2342-814	5% Captan 3% Trithion Dust	Kerr-McGee Chemical Corporation, Kerr-McGee Building, Oklahoma City, OK 73120	Nov. 29, 1968
2342-858	10% Captan 5% Trithion Dust	do	Aug. 24, 1973
2749-84	Dichloro 50 WP Fungicide	Aceto Agricultural Chemicals Corp., 126-02 Northern Blvd., Flushing, NY 11368	June 3, 1971
2905-337	RED-TOP EPN 4 Mosquitocide	Wilbur-Ellis Co., 191 West Shaw Avenue, Suite 107, Fresno, CA 93704	June 27, 1968
5505-303	Helena Trithion Sulfur 2-80 Dust	Helena Chemical Co., 5100 Poplar Avenue, Suite 2900, Memphis, TN 38137	Jan. 21, 1974
5905-343	Delnav 4-E Emulsifiable Concentrate	do	Jan. 21, 1974
7364-3	Algi-Cure	Great Lakes Biochemical Company, Inc., 6120 West Douglas Ave., Milwaukee, WI 53218	June 24, 1963
7364-8	Action Algi-Cure	do	June 17, 1965
9052-12	Rite-Off Triple Mix Repellent	Rite-Off, Inc., 1545 Fifth Industrial Court, Bay Shore, NY 11706	Dec. 5, 1972
10816-7	Ear Clean	W. T. Rawleigh Co., 223 East Main Street, Freeport, IL 61032	Nov. 20, 1972

The Agency has agreed that such cancellation shall be effective January 15, 1982 unless within this time the registrant or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for 1 year after the effective date of cancellation, whichever is earlier; provided that the use of these products

is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective

date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued, may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66086]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the Document Control Office, Room E-107, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended 86 Stat. 973 89 Stat. (751, 7 U.S.C. 136))

Dated: November 27, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 81-35612 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[OPP-50559; PH-FRL 2005-5]

American Cyanamid Co.; Issuance of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to American Cyanamid Co. This permit is in accordance with, and subject to, the provisions of 40 CFR Part 172 which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in the experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit: 241-EUP-98, American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 2,400 pounds of the herbicide pendimethalin on sweet corn to evaluate the control of weeds. A total of 600 acres are involved. The program is authorized only in the States of Minnesota and Wisconsin. The experimental use permit is effective from April 1, 1982 to April 1, 1983. Temporary tolerances for residues of the

active ingredient in or on sweet corn grain, fodder and forage have been established. (Robert Taylor, PM 25, Rm. 251, CM#2, (703-557-1800).)

Persons wishing to review this experimental use permit are referred to the designated product manager. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: November 9, 1981.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35613 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[OPP-50561; PH-FRL 2005-6]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

352-EUP-109. E.I. duPont de Nemours & Co., Wilmington, DE 19898. This experimental use permit allows the use of 300 pounds of the herbicide 2-chloro-N-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)aminocarbonyl]benzenesulfonamide on noncropland to evaluate the control of weeds. A total of 1,600 acres are involved. The program is authorized only in the States of California, Idaho, Oregon, and Washington. The experimental use permit is effective from November 1, 1981 to November 1, 1982. (Robert Taylor, PM 25, Rm. 251 CM#2, (703-557-1800).)

524-EUP-57. Monsanto Company, 1101 17th St., NW., Washington, DC 20036. This experimental use permit allows the use 2,360 pounds of the herbicide S-(2,3,3-Trichloroallyl) diisopropyl-thiocarbamate on barley, field dried peas, green peas, lentils, spring and durum wheat, and winter wheat to evaluate the control of weeds. A total of 2,360 acres are involved. The program is authorized only in the States of California, Colorado, Idaho, Kansas, Minnesota, Montana, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, and Washington. The experimental use permit is effective from October 26, 1981 to October 26, 1983. Permanent tolerances for residues of the active ingredient in or on barley, lentils, peas, and wheat have been established (40 CFR 180.314). (Robert Taylor, PM 25, Rm. 251, CM#2, (703-557-1800).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: November 19, 1981.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35614 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[OPP-50557; PH-FRL 2005-8]

Elanco Products Co.; Extension of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to Elanco Products Company. These permits are in accordance with, and subject to, the provisions of 40 CFR 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921

Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471-EUP-58. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 300 pounds of the herbicide oryzalin on winter wheat to evaluate control of weeds. A total of 300 acres are involved. The program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington. The experimental use permit is effective from August 6, 1981 to August 6, 1982. A temporary tolerance for residues of the active ingredient in or on wheat has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800).)

1471-EUP-69. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 32,420 pounds of the herbicide oryzalin on winter wheat to evaluate control of weeds. A total of 32,420 acres are involved. The program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington. The experimental use permit is effective from August 6, 1981 to August 6, 1982. A temporary tolerance for residues of the active ingredient in or on wheat has been established. The permits will use the same active ingredient but different formulations. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: November 9, 1981.
Douglas D. Camp, Jr.
Director, Registration Division, Office of
Pesticide Programs.
[FR Doc. 81-35616 Filed 12-15-81; 8:45 am]
BILLING CODE 6560-32-M

[OPP-66087; PH-FRL 2006-1]

Certain Pesticide Products; Intent to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the name of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 8(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Production of these products after the

effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: January 15, 1982.

ADDRESS: Written comments to: Documents Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St. SW., Washington, DC 20460 (202-426-2610).

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Process Coordination Branch (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 516, CM#2 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7121).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
148-995	Propanil 3	Thompson Hayward Chemical Co., P.O. Box 2700, Kansas City, KS 66110.	Oct. 20, 1972.
148-996	Propanil 4	do	Aug. 30, 1972.
148-1219	Propanil Technical	do	Oct. 14, 1975.
148-1220	Propanil MO	do	Nov. 12, 1975.
239-1779	Dibrom Cryolite 3-40 Dust	Chevron Chemical Co., 940 Hensley St., Richmond, CA 94801	Nov. 16, 1962.
635-630	E-Z Flo Granular Noraben	Grower Service Corporation, P.O. Box 18037, Lansing, MI 48901	Mar. 26, 1970.
802-447	Miller's Ethion 4 EC Agricultural Insecticide	The Chas. H. Lilly Company, 7737 N.E. Killingsworth St., Portland, OR 97218.	July 2, 1970.
802-450	Miller's Ethion 25W	do	Feb. 24, 1971.
45639-19	Herban Wettable Powder	BFC Chemicals Inc. P.O. Box 2967, Wilmington, DE 19805.	May 11, 1981.
45639-26	Herban 21A Wettable Powder	do	May 11, 1981.
45639-27	Herban-MSMA Surfactant Cotton Herbicide	do	May 11, 1981.
45639-30	Herban 21P Wettable Powder	do	May 11, 1981.
45639-33	Noraben Herban-Amben Liquid Slurry Mixture for Pre-emergence Weed Control in Soybeans	do	May 11, 1981.
45639-34	Noraben Granules	do	May 11, 1981.

The Agency has agreed that such cancellation shall be effective January 15, 1982 unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for 1 year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective

date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued, may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66087]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the Document Control Office, Room E-107, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended 88 Stat. 973 89 Stat. (751, 7 U.S.C. 136))

Dated: November 16, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 81-35617 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50564; PH-FRL-2006-2]

Renewal of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

The product manager cited in the experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

7452-EUP-6. The Freers Company, 2502 Lucas St., P.O. Box 103, Muscatine, IA 52761. This experimental use permit allows the use of 64 pounds of the fungicide 2-(4-thiazolyl)benzimidazole on oak trees to evaluate the control of oak wilt. A total of 225 trees per state are involved. The program is authorized only in the States of Illinois, Iowa, Minnesota, and Wisconsin. The program was previously effective from May 7, 1979 to May 7, 1981. It is now effective from October 20, 1981 to October 20, 1982. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900).)

38586-EUP-1. Washington State University, College of Agriculture, Pullman, WA 99164. This experimental use permit allows the use of 2,800 pounds of the insecticide/nematocide aldicarb on hops to evaluate the control of hops aphids and two-spotted spider mites. A total of approximately 200 acres are involved. The program is authorized only in the State of Washington. The permit was previously effective from June 20, 1978 to June 20, 1979. It is now effective from June 5, 1981 to June 5, 1982. Temporary tolerances for residues of the active ingredient in or on hops and dried hops have been established. (Jay S. Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: December 2, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35618 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50563; PH-FRL 2006-3]

Elanco Products Co.; Extension of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to Elanco Products Company. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

The product manager cited in the experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471-EUP-60. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 22,500 pounds of the fungicide tricyclazole on rice (preharvest) to evaluate control of rice blast and seedhead diseases of rice. A total of 45,000 acres are involved. The experimental use permit is authorized only in the States of Arkansas, Florida, Louisiana, Mississippi, and Texas. The experimental use permit is effective from October 2, 1981 to December 31, 1983. Temporary tolerances for residues of the active ingredient and its metabolite in or on rough rice (rice grains with hulls) has been established. A feed additive regulation for residues

of the active ingredient in or on rice bran, hulls and polishings has been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900).)

1471-EUP-70. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 217 pounds of the herbicide oryzalin on white potatoes to evaluate the control of weeds.

1471-EUP-71. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 210 pounds of the herbicide oryzalin on white potatoes to evaluate the control of weeds. This program and the one above are authorized only in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Michigan, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Virginia, and Wisconsin. Both experimental use permits are effective from October 5, 1981 to October 5, 1982. A temporary tolerance for residues of the active ingredient in or on potatoes has been established. The permits will use the same active ingredient but different formulations. (Robert Taylor, PM 25, Rm. 251, CM#2, (703-557-1800).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: December 2, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35619 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50560; PH-FRL 2006-4]

Elanco Products Co.; Renewal of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to Elanco Products Company. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which

defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

The product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471-EUP-50. Elanco Products Company, P.O. Box 1750, Indianapolis, IN 46206. This experimental use permit allows the use of 210 pounds of the fungicide alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinmethanol on turf grasses to evaluate control of dollar spot, Fusarium blight, large brown patch, and pink or gray snow mold. A total of 17.5 acres are involved. The program is authorized only in the States of Arizona, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, and Texas. The permit was previously effective from March 31, 1976 to March 31, 1977. It is now effective from March 18, 1981 to March 18, 1982. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900).)

1471-EUP-51. Elanco Products Company, P.O. Box 1750, Indianapolis, IN 46206. This experimental use permit allows the use of 18.75 pounds of the fungicide alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinmethanol on commercially grown roses to evaluate the control of powdery mildew. A total of 32 acres are involved. The program is authorized only in the States of Arizona, California, Colorado, Indiana, New York, Oregon, Pennsylvania, and Texas. The permit was previously effective from March 31, 1976 to March 31, 1977. It is now effective from March 18, 1981 to March 18, 1982. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900).)

1471-EUP-52. Elanco Products Company, P.O. Box 1750, Indianapolis, IN 46206. This experimental use permit allows the use of 6,125 pounds of the fungicide alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinmethanol on turf grasses to evaluate control of dollar spot, Fusarium blight, large brown patch, pink or gray snow mold, and striped smut. A total of 3 acres are involved. The program is authorized only in the States of California, Connecticut, Florida, Idaho, Illinois, Indiana, Maryland, Massachusetts,

Michigan, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island. The permit was previously effective from March 31, 1976 to March 31, 1977. It is now effective from March 18, 1981 to March 18, 1982. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900).)

1471-EUP-54. Elanco Products Company, P.O. Box 1750, Indianapolis, IN 46206. This experimental use permit allows the use of 25 pounds of the fungicide alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinmethanol on apples to evaluate the control of apple scab and powdery mildew. A total of 46 acres are involved. The program is authorized only in the States of Maryland, New York, North Carolina, Pennsylvania, Virginia, and Washington. The permit was previously effective from April 8, 1976 to March 8, 1977. It is now effective from March 18, 1981 to March 18, 1982. This permit is being issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900).)

1471-EUP-55. Elanco Products Company, P.O. Box 1750, Indianapolis, IN 46206. This experimental use permit allows the use of 15 pounds of the fungicide alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinmethanol on grapes to evaluate the control of powdery mildew. A total of 30 acres are involved. The program is authorized only in the State of California. The permit was previously effective from April 16, 1976 to April 16, 1977. It is now effective from March 18, 1981 to March 18, 1982. This permit is being issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900).)

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquiries concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: November 13, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35620 Filed 12-15-81; 8:48 am]

BILLING CODE 6560-32-M

[OPP-50553A; PH-FRL-2006-5]

Mobay Chemical Corp.; Amendment of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has amended an experimental use permit, No. 3125-EUP-175, issued to Mobay Chemical Corporation for use of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone on wheat to evaluate control of powdery mildew and rust diseases (leaf, stem, and stripe). The amendment adds five States, Arizona, California, Montana, North Carolina, and South Carolina to the program.

FOR FURTHER INFORMATION CONTACT:

Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the Federal Register of October 15, 1981 (46 FR 50843) pertaining to the issuance of an experimental use permit, No. 3125-EUP-175, to Mobay Chemical Corporation. This experimental use permit allows the use of 1,675 pounds of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone on wheat to evaluate control of powdery mildew and rust diseases (leaf, stem, and stripe). A total of 3,350 acres are involved. At the request of the company the permit has been amended. The program is now authorized only in the States of Arizona, Arkansas, California, Georgia, Idaho, Illinois, Indiana, Michigan, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, and Washington. All other conditions of the experimental use program remain the same.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: November 13, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35621 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-30161A; PH-FRL-2008-5]

American Cyanamid Co.; Approval of Application To Register a Pesticide Product Containing New Active Ingredient**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: EPA has approved the application by American Cyanamid Co. to register the pesticide product NEM-A-TAK 2L Nematocide containing an active ingredient not included in any previously registered pesticide product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C, Office of Pesticide Programs, Environmental Protection Agency, CM#2 Rm. 227, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of February 28, 1979 (44 FR 11269) that American Cyanamid Co., Agricultural Research Div., Princeton, NJ 08540, had submitted an application to register the pesticide product NEM-A-TAK 2L Nematocide containing 21.7 percent of the active ingredient cyclic methylene (diethoxyphosphinyl) dithioiminocarbonate an active ingredient not included in any previously registered product.

The application was approved on September 28, 1981 for restricted use in pesticide formulation. The product was assigned EPA registration No. 241-255.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: November 16, 1981.

Edwin L. Johnson,
Director, Office of Pesticide Programs.

[FR Doc. 81-35896 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[PF-249; PH-FRL-2008-8]

Dow Chemical Co.; Pesticide, Food, and Feed Additive Petitions**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: Dow Chemical Co. has filed petitions proposing food and feed additive regulations and the establishment of tolerances for the insecticide chlorpyrifos in or on certain agricultural commodities.

ADDRESS: Written comments to: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number "PF-249" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger (703-557-2388).

SUPPLEMENTARY INFORMATION: EPA gives notice that the following food and feed additive and pesticide petitions have been submitted to the agency requesting establishment of food and feed additive regulations and tolerances for the insecticide chlorpyrifos in or on certain raw agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

FAP 1H5323. Dow Chemical Co., P.O. Box 1706, Midland, MI 48640. Proposes amending 21 CFR 561.98 by establishing a regulation permitting the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the commodity corn soapstock at 1.0 part per million (ppm).

FAP 1H5323. Dow Chemical Co. Proposes amending 21 CFR 193.85 by establishing a regulation permitting the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate]

and its metabolite 3,5,6-trichloro-2-pyridinol in or on the commodity corn oil at 3.0 ppm.

PP 1F2575. Dow Chemical Co. Proposes amending 40 CFR 180.342 by establishing tolerances for the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity citrus fruits at 1.0 ppm. The proposed analytical method for determining residues is gas chromatography with a hydrogen flame ionization detector.

FAP 1H5322. Dow Chemical Co. Proposes amending 21 CFR 561.98 by establishing a regulation permitting the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the commodity dried citrus pulp at 5.0 ppm.

FAP 1H5322. Dow Chemical Co. Proposes amending 21 CFR 193.85 by establishing a regulation permitting the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the commodity citrus oil at 25.0 ppm.

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136); 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348))

Dated: November 17, 1981.

Douglas D. Campt,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35896 Filed 12-15-81; 8:45 am]

BILLING CODE 6560-32-M

[PF-230B; PH-FRL-2007-6]

E. I. Du Pont de Nemours & Co.; Amendment to Pesticide Petition**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: E. I. du Pont de Nemours & Co. has amended a pesticide petition proposing the establishment of a tolerance for the combined residues of the herbicide hexazinone and its metabolites in or on raw agricultural commodity forage grasses.

ADDRESS: Written comments to: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the *Federal Register* of June 19, 1981 (46 FR 32071), announcing that E. I. du Pont de Nemours & Co., Wilmington, DE 19898, had submitted a pesticide petition (PP 1F2513) proposing that 40 CFR Part 180.396 be amended by establishing tolerances for the combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione) and its metabolites (calculated as hexazinone) in or on range grasses at 10 parts per million (ppm).

E. I. du Pont de Nemours and Co. has submitted an amendment to change the commodity from "range grasses" to "forage grasses" at 10 ppm. The proposed analytical method for determining residues is by nitrogen-selective chromatography.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: December 2, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-39902 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[OPP-30205A; PH-FRL-2008-6]

**E. I. du Pont de Nemours & Co.;
Withdrawal of Application to Register
a Pesticide Product Containing New
Active Ingredient**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: E. I. du Pont de Nemours & Co. has withdrawn its application to register the pesticide product Du Pont Glean Weed Killer containing an active ingredient not included in any previously registered pesticide product as provided for in section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, CM# 2 Rm. 245, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1800).

SUPPLEMENTARY INFORMATION: In the *Federal Register* of October 13, 1981 (46 FR 50412), the EPA announced an application by E. I. du Pont de Nemours & Co., Wilmington, DE 19898, to register the pesticide product Du Pont Glean Weed Killer, file symbol 352-UNG. The product containing 75 percent of the active ingredient 2-chloro-N-[(methoxy-6-methyl-1,3,5-triazin-2-yl)

aminocarbonyl] benzenesulfonamide, and active ingredient not included in any previously registered product, was intended for general use to control weeds on noncropland areas.

On October 8, 1981, E. I. du Pont withdrew the application without prejudice to further filing of an application for the product.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: December 2, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35693 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[PF-248; PH-FRL-2008-3]

Elanco Products Co.; Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Elanco Products Co. has filed a pesticide petition proposing the establishment of a tolerance for the herbicide and plant growth regulator trifluralin in or on the raw agricultural commodity flax.

ADDRESS: Written comments to: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petition is pending before the agency. The comments are to be identified by the document control number "[PF-248]" and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA gives notice that Elanco Products Co., Division of Eli Lilly and Co., 740 South Alabama St., Indianapolis, IN 46285, has submitted a pesticide petition to EPA pursuant to the Federal Food, Drug, and Cosmetic Act. The petition (PP 1F2579) proposes amending 40 CFR 180.207 by the establishment of a tolerance for residues of the herbicide and plant growth regulator trifluralin (alpha, alpha, alpha-trifluoro-2,6-dinitro-N,N-dipropyl-p-toluidine) in or on the raw agricultural commodity flax at 0.05 part per million (ppm). The proposed analytical method for determining residues is gas chromatography.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: November 10, 1981.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-35905 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[OPP-C30207; PH-FRL-2008-4]

**NOR-AM, Inc.; Application to
Conditionally Register a Pesticide
Product Containing a New Active
Ingredient**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register a pesticide product containing an active ingredient not included in any previously registered pesticide product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

DATE: Comment by January 15, 1982.

ADDRESS: Written comments, identified by the document control number [OPP-C30207] and the file symbol, should be submitted to: Henry Jacoby (PM-21), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA received an application as follows to conditionally register a pesticide product containing an active ingredient not included in any previously registered pesticide product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Application Received

File Symbol: 2139-REU.

Applicant: NOR-AM Agricultural Products, Inc., 350 West Shuman Blvd. Naperville, IL 60566.

Product name: Prevex.

Active ingredient: Propamocarb hydrochloride, propyl [3-(dimethylamino)propyl] carbamate monohydrochloride 66.5%.

Proposed classification: General use for control of pythium and phytophthora in ornamentals.

Notice of approval or denial of an application to register a pesticide product will be announced in the *Federal Register*. Except for such material protected by section 10 of

FIFRA, the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The label furnished by the applicant, as well as all written comments filed pursuant to this notice, will be available in the product manager's office between 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: November 13, 1981.

Douglas D. Campt,
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 81-35097 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[PF-252; PH-FRL-2007-5]

Pennwalt Corp.; Food and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pennwalt Corp. filed a petition proposing to amend a food and a feed additive regulations on residues of *O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate.

ADDRESS: Written comments to: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number "[PF-252]" and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: George LaRocca (703-557-2400).

SUPPLEMENTARY INFORMATION:

Pennwalt Corp., Agchem Division, Three Parkway, Philadelphia, PA 19102, has submitted a petition (FAP 1H5324) proposing to amend 21 CFR as follows:

21 CFR 193.142. Proposes to include the following sentence to paragraph (a)(1): "The spray concentration limit of 1 percent shall include, but not be limited to, encapsulated formulations of the additive utilizing the encapsulating polymer formed from the reaction of sebacoyl chloride, polymethylene polyphenylisocyanate, ethylenediamine and/or diethylenetriamine".

21 CFR 561.415. Proposes to include the following sentence to paragraph (a)(1): "The spray concentration limit of 1 percent shall include, but not be limited to, encapsulated formulations of the additive utilizing the encapsulating polymer formed from the reaction of sebacoyl chloride, polymethylene polyphenylisocyanate, ethylenediamine and/or diethylenetriamine".

(Sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: November 25, 1981.

Robert V. Brown,
Acting Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 81-35001 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[PF-225A; PH-FRL-2008-7]

Rohm and Haas Co.; Amendment to Food Additive Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Rohm and Haas Co. has amended a feed additive petition proposing the establishment of a regulation permitting the combined residues of the herbicide oxyfluorfen and its metabolites in or on cottonseed oil and mint oil (peppermint and spearmint) oil.

ADDRESS: Written comments to: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of June 10, 1981 (46 FR 30692), announcing that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, had submitted a petition (FAP 1H5296) proposing that 21 CFR 193.325 be amended by establishing regulations permitting the combined residues of the herbicide oxyfluorfen (2-chloro-1-(3-

ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene and its metabolites, containing the diphenyl ether linkage in or on the food items cottonseed oil at 0.2 part per million (ppm), and mint oil (peppermint and spearmint) at 0.25 ppm and 21 CFR 561.415 for the feed items pistachio hulls at 0.1 ppm and walnut hulls at 0.1 ppm.

Rohm and Haas Co. has submitted an amendment proposing that the tolerance limitation on cottonseed oil be increased from 0.2 ppm to 0.25 ppm and deleting the proposed tolerances for pistachio hulls and walnut hulls.

(Sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: December 2, 1981.

Robert V. Brown,
Acting Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 81-35092 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-32-M

[PF-246; PH-FRL-2008-1]

Shell Oil Co.; Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Shell Oil Co. has filed a pesticide petition proposing the establishment of tolerances for the insecticide cyano [(3-phenoxyphenyl) methyl-4-chloro-alpha (1-methylethyl) benzeneacetate] in or on certain raw agricultural commodities.

ADDRESS: Written comments to: Franklin Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petition is pending before the agency. The comments are to be identified by the document control number "[PF-246]" and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Franklin Gee, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA gives notice that Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036, has submitted a pesticide petition to EPA pursuant to the Federal Food, Drug, and Cosmetic Act. The petition (PP 1F2568) proposes amending 40 CFR 180.379 by the establishment of tolerances for residues of the insecticide cyano [(3-

phenoxyphenyl) methyl-4-chloro-alpha (1-methylethyl) benzeneacetate] in or on the raw agricultural commodities sugarcane at 2.0 parts per million (ppm) and sunflower seeds at 1.0 ppm. The proposed analytical method for determining residues is gas chromatography.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: November 2, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

(FR Doc. 81-35894 Filed 12-15-81; 8:45 am)

BILLING CODE 6560-32-M

(PF-245; PH-FRL-2008-2)

Tuco Products Co.; Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition by Tuco Products Co., to establish an exemption from the requirement of a tolerance for residues of *Colletotrichum gloeosporioides* f. sp. *aeschynomene* in or on certain raw agricultural commodities.

ADDRESS: Written comments to: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Written comments may be submitted while the petition is pending before the agency. The comments are to be identified by the document control number "(PF-245)" and the petition number (PP 1F2574). Written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort (703-557-1830).

SUPPLEMENTARY INFORMATION: Tuco Product Co., Division of Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49001, has submitted a pesticide petition (PP 1F2574) to EPA. The petition proposes that 40 CFR Part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological herbicide *Colletotrichum gloeosporioides* f. sp. *aeschynomene* in or on the raw agricultural commodities rice (grain, hay, straw); soybeans (dry or succulent) (forage, hay, hulls, straw, vines); meat; fat; meat byproducts of cattle, goats,

horses, hogs, sheep, and poultry; eggs; and milk.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: November 4, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

(FR Doc. 81-35900 Filed 12-15-81; 8:45 am)

BILLING CODE 6560-32-M

(OPP-50562; PH-FRL-2007-3)

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

The product managers cited in the experimental use permits at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

2224-EUP-18. Mobile Chemical Company, P.O. Box 26683, Richmond, VA 23261. This experimental use permit allows the use of 2,600-pound of the herbicide sodium salt of acifluorfen on soybeans to evaluate the control of weeds. A total of 5,200 acres are involved. The program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Virginia. The experimental use permit is effective from May 19, 1981 to July 31, 1982. A permanent tolerance for residues of the active ingredient in or on soybeans has been established (40 CFR 180.383). (Richard F. Mountfort, PM 23, Rm. 237, CM#2, 557-1830.)

1258-EUP-13. Olin Corporation, 120 Long Ridge Road, Stamford, CT 06905. This experimental use permit allows the use of 9,700 pounds of the fungicide 5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole on field corn and wheat to evaluate the control of nitration inhibition. A total of 19,400 acres are involved. The program is authorized only in the States of Alabama,

California, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, North Dakota, Ohio, Texas, Washington, and Wisconsin. The experimental use permit is effective from August 11, 1981 to January 1, 1983. Temporary tolerances for residues of the active ingredient in or on the raw agricultural commodities corn grain (field); corn forage and fodder; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; milk; and wheat (grain, forage, and straw) have been established. (Henry M. Jacoby, PM 21, Rm. 227, CM#2 (703-557-1900).)

1258-EUP-14. Olin Corporation, 120 Long Ridge Road, Stamford, CT 06905. This experimental use permit allows the use of 6,400 pounds of the fungicide 5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole on field corn and wheat to evaluate the control of nitration inhibition. A total of 12,700 acres are involved. The program is authorized only in the States of Alabama, California, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, North Dakota, Ohio, Texas, Washington, and Wisconsin. The experimental use permit is effective from August 11, 1981 to January 1, 1983. Temporary tolerances for residues of the active ingredient in or on the raw agricultural commodities corn grain (field); corn forage and fodder; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; milk; and wheat (grain, forage, and straw) have been established. The permits will use the same active ingredient but different formulations. (Henry M. Jacoby, PM 21, Rm. 227, CM#2 (703-557-1900).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: November 10, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

(FR Doc. 81-35903 Filed 12-15-81; 8:45 am)

BILLING CODE 6560-32-M

[OPTS-51366; TSH-FRL-2007-4]

Certain Chemicals; Premanufacture Notices**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the *Federal Register* of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of three PMNs and provides a summary of each.

DATES: Written comments by: PMN 81-622—February 1, 1982. PMN 81-623 and 81-624—February 5, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51366]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-622

Close of Review Period. March 3, 1982.

Manufacturer's Identity. Ashland Chemical Company, P.O. Box 2219, Columbus, OH 43216.

Specific Chemical Identity. Fumaric acid, maleic anhydride, isophthalic acid polymer of propylene glycol and ethylene glycol.

Use. The manufacturer states that the PMN substance will be used in press molding applications.

PRODUCTION ESTIMATES

	Pounds	
	Minimum	Maximum
1st year	100,000	200,000
2d year	200,000	300,000

PRODUCTION ESTIMATES—Continued

	Pounds	
	Minimum	Maximum
3d year	250,000	400,000

Physical/Chemical Properties

Appearance—Solid at ambient temperatures.

Viscosity @ 67% NV in styrene—1,000–2,000.

Solubility: water—Insoluble.

Acid value—25–35.

Vapor pressure—Negligible.

Molecular weight (est.)—2,000–2,200.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during processing 1 worker may experience exposure for 2 to 3 minutes, approximately once each hour during sampling and drumming.

Environmental Release/Disposal. Disposal is by incineration and landfill.

PMN 81-623

Close of Review Period. March 7, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Over \$500,000,000.

Manufacturing site—East North Central region.

Standard Industrial Classification Code—2821.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Copolymer of alkyl acrylates and methacrylates.

Use. The manufacturer states that the PMN substance will be used as a site-limited coating.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Acid number—25–30.

Weight/gallon—9.1–9.5.

Hydroxyl number—65–80.

Molecular weight (determined by GPC)—5,300.

Toxicity Data. No data were submitted.

Exposure. No data were submitted.

Environmental Release/Disposal. The manufacturer states that there will be no release to the environment.

PMN 81-624

Close of Review Period. March 7, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Manufacturing Site—Middle Atlantic region.

Standard Industrial Classification Code—285:a.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Modified polyester from alkanedioic acid, substituted alkane triol and a carbomonomocyclic acid.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in an open use.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	15,000	30,000
2d year	22,500	45,000
3d year	30,000	60,000

Physical/Chemical Properties

Flash point—106°F.

Viscosity—X-Y.

Color—1.

% Total solids—60.0.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and processing a total of 107 workers may experience dermal and ocular exposure up to 6 hrs/day, up to 30 days/yr during extraction, analysis, cleaning, and filling.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air and water and 10–1,000 kg/yr to land. Disposal is by incineration.

Dated: December 8, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-35905 Filed 12-15-81; 8:45 am]

BILLING CODE 5560-31-M

[PF-250; PH-FRL-2007-8]

Certain Companies; Pesticide and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: This notice announces that certain companies have filed petitions proposing feed additive regulations and establishing tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office

of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number "[PP-250]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following feed additive and pesticide petitions have been submitted to the agency requesting establishment of feed additive regulations and tolerances for certain pesticide chemicals in or on certain raw agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

FAP 2H5325. Union Carbide Corp., Agricultural Products Co., Inc., PO Box 12014, T.W. Alexander Dr., Research Triangle Park, NC 27709. Proposes amending 21 CFR 561 by establishing a regulation permitting residues of the insecticide thiodicarb, [dimethyl *N,N'*-(thiobis[(methylimino)carbonyloxy]) bis [ethanimidothioate]], and its metabolite methomyl, *N*-(methylcarbamoxy)oxy]-thioacetimidate in or on the commodities cottonseed hulls at 0.8 part per million (ppm) and soybean hulls at 0.4 ppm. (PM-12, Jay S. Ellenberger, 703-557-2387.)

PP 2F2588. Dow Chemical Co., PO Box 1706, Midland, MI 48640. Proposes amending 40 CFR 180.342 by establishing tolerances for the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity sunflower seeds at 0.2 ppm. The proposed analytical method for determining residues is by gas chromatography using a hydrogen flame ionization detector. (PM-12, Jay Ellenberger, 703-557-2386.)

FAP 2H5326. Dow Chemical Co. Proposes amending 21 CFR 561.98 by establishing a regulation permitting residues of the insecticide chlorpyrifos in or on the commodity sunflower seed hulls at 0.5 ppm. (PM-12, Jay S. Ellenberger, 703-557-2386.)

PP 2F2590. EM Industries, Inc. Plant Protection Division, 5 Skyline Drive,

Hawthorne, NY 10532. Proposes amending 40 CFR 180 by establishing tolerances for residues of the fungicide triforine [*N,N'*-(1-4-piperazinediyl)-bis(2,2,2-trichloroethylidene)]-bis-[foramamide]] in or on the raw agricultural commodities almonds at 0.01 ppm and almond hulls at 0.1 ppm. The proposed analytical method for determining residues is gas chromatographic technique. (PM-21, Henry Jacoby, 703-557-1900.)

PP 2F2586. Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036. Proposes amending 40 CFR 180.379 by establishing tolerances for residues of the insecticide cyano (3-phenoxypheyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodities cucumbers and summer squash at 0.5 ppm. The proposed analytical method for determining residues is by gas liquid chromatography. (PM-17, Franklin Gee, 703-557-2690.)

PP 2F2587. Shell Oil Co. Proposes amending 40 CFR 180.379 by establishing tolerances for residues of the insecticide cyano in or on the raw agricultural commodities peaches at 4.0 ppm, broccoli at 2.0 ppm, and cauliflower at 0.5 ppm. The proposed analytical method for determining residues is by gas liquid chromatography. (PM-17, Franklin Gee, 703-557-2690.)

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136) 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: December 2, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

(FR Doc. 81-35900 Filed 12-15-81; 8:45 am)

BILLING CODE 6560-32-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can

"reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicated how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than January 7, 1982.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

Citizens Fidelity Corporation, Louisville, Kentucky (leasing activities: Florida, Alabama, Georgia and South Carolina): To engage, through its subsidiary, Citizens Fidelity Leasing Corporation, in the leasing of personal property and equipment and acting as agent, broker or advisor, in the leasing of such property, in a manner such that the leasing would serve as a functional equivalent to an extension of credit and subject to the limitations and restrictions specified in 12 CFR 225.4(a)(6). These activities would be conducted from an office in Orlando, Florida, serving the states of Florida, Alabama, Georgia and South Carolina.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Bancorp Hawaii*, Honolulu, Hawaii (insurance agency activities; Hawaii and Guam): To engage through its direct subsidiary, Bancorp Insurance Agency of Hawaii, Inc., a Hawaii corporation, in the activities of an insurance agent for the sale of all credit life and credit accident and health insurance sold by Bank of Hawaii, a wholly-owned subsidiary of Bancorp Hawaii, in conjunction with its various lending activities. These activities will be conducted from an office in Honolulu, Hawaii, and serving the entire state of Hawaii, and Guam.

2. *BankAmerica Corporation*, San Francisco, California (financing, servicing, and insurance activities; office relocation; New Jersey and southeast Pennsylvania): To continue to engage, through its indirect subsidiary, *FinanceAmerica Corporation*, a New Jersey corporation, in making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance and credit-related accident and health insurance. Credit-related property insurance will not be offered in either the state of New Jersey or the southeast region of Pennsylvania. Such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans secured by real and personal property, and offering credit-related life and credit-related accident and health insurance directly related to extensions of credit made or acquired by *FinanceAmerica Corporation*.

These activities will be conducted from an office in Quakerbridge Plaza, Hamilton, New Jersey, serving the entire state of New Jersey and the southeast region of Pennsylvania. This application is for approval to relocate an office presently located in Cookstown, New Jersey.

3. *BankAmerica Corporation*, San Francisco, California (financing, servicing, and insurance activities; New York): To continue to engage, through its indirect subsidiary, *BA FinanceAmerica Corporation*, a New York corporation, in the activities of making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance and credit-related accident and health insurance. Credit-related property insurance will not be offered in the state of New York. Such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans and other extensions of credit secured by real and personal property, and offering credit-related life and credit-related accident and health insurance directly related to extensions of credit made or acquired by *BA FinanceAmerica Corporation*.

These activities will be conducted

from an existing office located in Valley Stream, New York, serving the entire state of New York. This application is for an expansion of the geographic area served by the subsidiary.

C. Other Federal Reserve Banks: None.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,
Assistant Secretary of the Board.

[FR Doc. 81-35873 Filed 12-15-81; 8:00 am]

BILLING CODE 6210-01-M

Cedar Bancorp; Formation of Bank Holding Company

Cedar Bancorp, Hartington, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 91.2 percent or more of the voting shares of *Bank of Hartington*, Hartington, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 8, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,
Assistant Secretary of the Board.

[FR Doc. 81-35874 Filed 12-15-81; 8:46 am]

BILLING CODE 6210-01-M

DeKalb Bancshares, Inc.; Formation of Bank Holding Company

DeKalb Bancshares, Inc., Crossville, Alabama, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of *The DeKalb Bank*, Crossville, Alabama. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or

at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 30, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 9, 1981.

James McAfee,
Assistant Secretary of the Board.

[FR Doc. 81-35875 Filed 12-15-81; 8:46 am]

BILLING CODE 6210-01-M

Delta Bancshares, Inc.; Formation of Bank Holding Company

Delta Bancshares, Inc., Eudora, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of *The Eudora Bank*, Eudora, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 8, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,
Assistant Secretary of the Board.

[FR Doc. 81-35876 Filed 12-15-81; 8:46 am]

BILLING CODE 6210-01-M

Ellettsville Bancshares, Inc.; Formation of Bank Holding Company

Ellettsville Bancshares, Inc., Ellettsville, Indiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80

percent or more of the voting shares of The Peoples State Bank, Ellettsville, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 8, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,
Assistant Secretary of the Board.

[FR Doc. 81-35877 Filed 12-15-81; 8:45 am]

BILLING CODE 6210-01-M

Emmons Agency, Inc.; Formation of Bank Holding Company

Emmons Agency, Inc., Emmons, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 60.5 percent or more of the voting shares of The First State Bank of Emmons, Emmons, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Emmons Agency, Inc., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain voting shares of Emmons Agency, Inc., Emmons, Minnesota.

Applicant states that the proposed subsidiary would engage in the activity of operating a general insurance agency in a town of less than 5,000 population. These activities would be performed from offices of Applicant's subsidiary in Emmons, Minnesota, and the geographic area to be served is Emmons, Minnesota and the surrounding area. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether

consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than January 8, 1982.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,
Assistant Secretary of the Board.

[FR Doc. 81-35878 Filed 12-15-81; 8:45 am]

BILLING CODE 6210-01-M

Great American Bancorp; Formation of Bank Holding Company

Great American Bancorp, Los Angeles, California, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Great American Bank, Los Angeles, California. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 5, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,
Assistant Secretary of the Board.

[FR Doc. 81-35879 Filed 12-15-81; 8:45 am]

BILLING CODE 6210-01-M

Greenview Banc Shares, Inc.; Formation of Bank Holding Company

Greenview Banc Shares, Inc., Greenview, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Greenview Community Bank, Greenview, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 8, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,
Assistant Secretary of the Board.

[FR Doc. 81-35880 Filed 12-15-81; 8:45 am]

BILLING CODE 6210-01-M

Texas American Bancshares, Inc.; Acquisition of Bank

Texas American Bancshares, Inc., Fort Worth, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Commercial National Bank of Longview, Longview, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 8, 1982.

Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc 81-35881 Filed 12-15-81; 8:45 am]

BILLING CODE 6210-01-M

United Missouri Bancshares, Inc.; Acquisition of Bank

United Missouri Bancshares, Inc., Kansas City, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of City Bancshares, Inc., Kansas City, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 6, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 9, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc 81-35882 Filed 12-15-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR H-37]

Regional Consolidation of Personal Property Programs; Utilization and Disposal

December 7, 1981.

1. *Purpose.* This bulletin is issued to notify agencies of the consolidation of personal property programs in the GSA regional offices, and to redirect agency inquiries and program documentation accordingly. The personal property programs provide for the utilization of

excess property among Federal agencies, donation of surplus property, the sale of surplus and exchange/sale property, and the maintenance and repair of personal property through service contracts.

2. *Expiration date.* This bulletin will remain in effect until the required amendment to the FPMR is published in the Federal Register.

3. *Background.* In order to conduct the personal property programs efficiently with the current and projected resources available, FPMR is consolidating the Personal Property Divisions from 10 regions into 4 regional offices.

4. *General.* On or before February 28, 1982, the Personal Property Divisions in Regions 1, 2, 5, 6, 8, and 10 will be disestablished and the personal property functions transferred to the Consolidated Personal Property Regions listed below.

Consolidated personal property regions	Standard GSA regions covered
NCR—Washington, DC.....	Regions 1, 2, 3, and NCR
Region 4—Atlanta, GA.....	Regions 4 and 5.
Region 7—Fort Worth, TX.....	Regions 6 and 7.
Region 9—San Francisco, CA.....	Regions 8, 9, and 10.

5. *Agency action.* Effective December 14, 1981, Standard Form 120, Report of Excess Personal Property, and Standard Form 126, Report of Personal Property for Sale, should be submitted to the appropriate consolidated regional Personal Property Division listed above. Standard Form 122, Transfer Order Excess Personal Property, may continue to be submitted to the regional Personal Property Division in which the property is located until February 12, 1982, for items reported prior to December 14, 1981. After February 12, 1982, all transfers of reportable property will be approved by the Consolidated Personal Property Regions. Inquiries regarding property reported to a Personal Property Division scheduled to be deactivated should be directed to those regional offices until they are closed out on February 28, 1982. After that date, any remaining workload will be reassigned to the consolidated regional offices listed above. Inquiries regarding contract administration should continue to be made to the region of origin.

6. GSA assistance.

a. A field office with personal property program representatives reporting to the Consolidated Personal Property Division office will be maintained in the regions where a Personal Property Division is disestablished to maintain customer liaison, contract administration, and related work of a local nature.

b. Additional information needed in connection with this bulletin may be obtained by writing to the Commissioner, Federal Property Resources Service (D), General Services Administration, Washington, DC 20406, or by calling the Office of Personal Property (DP), telephone (703) 557-3852.

Roy Markon,

Commissioner, Federal Property Resources Service.

[FR Doc. 81-35870 Filed 12-15-81; 8:45 am]

BILLING CODE 6820-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Effect of Fluoride on Carcinogenicity of Mineral Fibers; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Effect of Fluoride on Carcinogenicity of Mineral Fibers

Date: January 12, 1982

Time: 1 p.m. to 4 p.m.

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Room B-38, Cincinnati, OH 45226

Purpose: To review the research project proposal on the "Effect of Fluoride on Carcinogenicity of Mineral Fibers."

Additional information may be obtained from: David H. Groth, M.D., Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Mail Stop C-26, Cincinnati, OH 45226, Telephone: (513) 684-8361

Dated: December 9, 1981,

William H. Fooge,

Director, Centers for Disease Control.

[FR Doc. 81-35928 Filed 12-15-81; 8:45 am]

BILLING CODE 4160-19-M

Office of Child Support Enforcement

Child Support Enforcement Research; Demonstration Grants; Cancellation of Anticipated Fiscal Year 1982 Project

AGENCY: Office of Child Support Enforcement, HHS.

ACTION: Cancellation of anticipated fiscal year 1982 project.

SUMMARY: On June 19, 1981, we announced in the Federal Register (46

FR 32220) the availability of FY '81 funds for child support enforcement research and demonstration grants. In that notice we described a project which we anticipated being a research priority for FY '82 subject to funds being appropriated. This is to announce that, effective December 16, 1981, the FY '82 project as announced in the June 19, 1981 issue of the *Federal Register* is cancelled.

SUPPLEMENTARY INFORMATION: We anticipated funding a FY '82 project (OCSE-82-1 (Survey of Non-AFDC Cases Which Receive Child Support Enforcement Services)) which would have involved the study of a stratified sample of closed, new, and continuing non-AFDC Child Support Enforcement program clients involving the demographic, economic, and sociological characteristics of the population. One aspect of the study was to indicate the extent to which program coverage of that population avoids welfare eligibility. The date for submitting grant applications for that project would have been December 1, 1981. However, we plan to review other topics as possible research projects and have decided to cancel this project until we complete that review. If that review identifies research topics for which funds may be appropriated, we will publish a *Federal Register* notice announcing the availability of funds and the types of projects to be funded.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence H. Pullen, Chief, Grants Management Branch, Social Security Administration, Division of Contracts and Grants Management, Room L2102, West Low Rise Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (301) 594-0284.

(Catalog of Federal Domestic Assistance Program No. 13.812—Assistance Payments—Research)

Dated: December 9, 1981.

John A. Svahn,
Director, Office of Child Support
Enforcement.

[FR Doc. 81-35868 Filed 12-15-81; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Utah; Invitation To Participate in Coal Exploration Program; Royal Land Co.

Royal Land Company is inviting all qualified parties to participate in a program for the exploration of coal reserves on Stevens Creek near Ferron, Utah. The lands are located in Emery

and Sanpete Counties, Utah, and are described as follows:

Township 19 South—Range 6 East, SLM,
Sec. 19, Lots 1, 2, 3, 4, E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 30, Lots 1, 2, 3, 4, E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 31, All;
Sec. 32, All.

Township 20 South—Range 6 East, SLM,
Sec. 5, All;
Sec. 6, All;
Sec. 7, All;
Sec. 8, All;
Sec. 17, All;
Sec. 18, All;
Sec. 19, All;
Sec. 20, All.

Township 19 South—Range 5 East, SLM,
Sec. 23, All;
Sec. 25, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
Sec. 26, All;
Sec. 35, All;
Sec. 36, All.

Township 19 $\frac{1}{2}$ South—Range 5 East, SLM,
Sec. 35, All;
Sec. 36, All.

Township 20 South—Range 5 East, SLM,
Sec. 1, All;
Sec. 2, All;
Sec. 11, All;
Sec. 12, All;
Sec. 13, N $\frac{1}{2}$.

Containing 14,452.37 Acres, more or less.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111, and to Mr. James D. Copen, Staff Geologist, Royal Land Company, 925 South Niagara, Suite 600, Denver, Colorado 80224. Such written notice must be received by January 15, 1982.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Royal Land Company, is available for public review during normal business hours, in the following office, under Serial No. U-50070: Bureau of Land Management, Room 1400, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Robert E. Anderson,
Chief, Division of Technical Services.

[FR Doc. 81-35833 Filed 12-15-81; 8:45 am]

BILLING CODE 4310-84-M

Flat Squaw Park Management Framework Plan; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Planning amendment—Big Flat Squaw Park Management Framework

Plan—to consider surface mining of carbonaceous shale (humate).

SUMMARY: This notice amends the original *Federal Register* Notice published on page 53602, December 2, 1981. The Notice is amended to say that public comment will be accepted for 30 days, until January 4, 1982.

For further information concerning the planning amendment contact Colin P. Christensen, Grand Resource Area Manager, Sand Flats Road, Moab, Utah 84532, or call (801) 259-6111. A copy of the draft EA is also available from the Moab District Public Information Officer, P.O. Box 970, Moab, Utah 84532.

Gene Nodine,
District Manager.

[FR Doc. 81-38926 Filed 12-15-81; 8:45 am]

BILLING CODE 4310-84-M

[Nev-049758, Nev-049763, Nev-049823, Nev-049850, Nev-049858, Nev-049891, Nev-064436]

Nevada; Classifications Vacated

December 8, 1981.

Pursuant to the authority designated by Bureau Order 701 and amendments thereto, small tract classifications Nev-049758, Nev-049763, Nev-049823, Nev-049850, Nev-049858, Nev-049891 and Nev-064436 are hereby vacated in their entireties. The following townships are affected:

Mount Diablo Meridian

T. 12 S., R. 47 E.

T. 15 S., R. 50 E.

T. 17 S., R. 50 E.

T. 27 S., R. 59 E.

The land affected comprises approximately 1,719.81 acres in Nevada (60 acres in Clark County and 1,659.81 acres in Nye County).

The Small Tract Act was repealed by Section 702 of the Federal Land Policy and Management Act of 1976. Accordingly, the classification is no longer applicable and is hereby terminated. The segregative effect of the classification order is removed upon publication of this notice in the *Federal Register*.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 81-35925 Filed 12-15-81; 8:45 am]

BILLING CODE 4310-84-M

[OR 6057]

Oregon; Termination of Disposal Classification

1. By Order of the Oregon State Director, Bureau of Land Management,

dated April 23, 1970, the following described public lands were classified for disposal through exchange and/or public sale pursuant to Section 2 of the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411-18 and 1421-27):

Willamette Meridian, Oregon

- T. 3N., R. 27 E.,
 Sec. 2, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 12, S $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 24, SW $\frac{1}{4}$
 T. 5 N., R. 28 E.,
 Sec. 22, E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 26, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 34, S $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 5 N., R. 30 E.,
 Sec. 10, S $\frac{1}{2}$;
 Sec. 11, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 13, SE $\frac{1}{4}$.

The areas described aggregate 1,040.00 acres in Umatilla County, Oregon.

2. The above-described public lands are not included in any disposal actions; accordingly, pursuant to 43 CFR 2461.5(c)(2), the classification is terminated upon publication of this notice in the Federal Register.

3. At 10 a.m., on January 12, 1982, the lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on January 12, 1982, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 10 a.m., on January 12, 1982, the lands described above will be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 7, 1981.

William G. Leavell
 State Director.

[FR Doc. 81-35927 Filed 12-15-81; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct specific activities with Endangered Species.

Applicant: Zoological Society of Cincinnati, Cincinnati, Ohio—PRT 2-8681.

The applicant requests a permit to import one Chinese giant salamander (*Andrias davidianus davidianus*) from

the Metropolitan Toronto Zoo, Ontario, Canada, for enhancement of propagation.

Applicant: Zoological Society of Cincinnati, Cincinnati, Ohio—PRT 2-8682.

The applicant requests a permit to export two (2) captive-bred, female jaguars (*Panthera onca*) to Para Safari, Quebec, Canada, for enhancement of propagation.

Applicant: Mr. Sean Niland, Westminster, Colorado—PRT 2-8691.

The applicant requests a permit to import one male captive-bred Jamaican boa (*Epicrates subflavus*) from the Reptile Breeding Foundation, Ontario, Canada, for enhancement of propagation.

Applicant: Dallas Zoo, Dallas, Texas—PRT 2-8692.

The applicant requests a permit to export six (6) captive-bred Coahuilan box turtles (*Terrapene coahuila*) to the Jersey Wildlife Preservation Trust, Jersey, Channel Islands, United Kingdom, for enhancement of propagation.

Applicant: San Diego Zoo, San Diego, California—PRT 2-8690.

The applicant requests a permit to import four (4) Oriental white storks (*Ciconia ciconia boyciana*) and four (4) Elliot's pheasants (*Syrnaticus ellioti*) from the Kwang Chow Zoo and Tai Yuan Zoo, the People's Republic of China, for enhancement of propagation.

Applicant: Milwaukee County Zoo, Milwaukee, Wisconsin—PRT 2-8402.

The applicant requests an amendment to its permit, which allows the import of five captive-bred Mandrills (*Papio sphinx*), to import an additional female mandrill, born 8 December 1981, to female A465.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO P.O. Box 3654, Arlington, Virginia 22203.

Interested persons may comment on these applications on or before January 15, 1982 by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: December 11, 1981.

Robert Batky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 81-35934 Filed 12-15-81; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permits Issued for Month of November

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to Section 10 of the Endangered Species Act of 1973 as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973 as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, Box 3654, Arlington, VA 22203, telephone (703/235-1903) or by appearing in person at the Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 605, Arlington, VA, between the hours of 9:00 a.m. and 3:00 p.m. weekdays.

TX Parks & Wildlife	X1866	Nov. 10, 1981.
Field, Mus. of Nat. Hist.	X2190	Nov. 19, 1981.
McCland, Riley B. Dr.	X2552	Nov. 5, 1981.
Tata, Barbara	X4341	Nov. 17, 1981.
OM Dept. of Nat. Res.	X4400	Nov. 5, 1981.
B.P. Bishop Museum	X4498	Nov. 13, 1981.
National Zoo Park	X6400	Nov. 18, 1981.
Everglades Nat. Park	X7585	Nov. 30, 1981.
Fla State Museum	X8260	Nov. 18, 1981.
Berwin, Bernard	X8308	Nov. 5, 1981.
Beak Consultants	X8360	Nov. 19, 1981.
The Univ. of Conn.	X8411	Nov. 19, 1981.
Schrope, James E.	X8415	Nov. 13, 1981.
Allen, Harold B.	X8444	Nov. 3, 1981.
Winsky, Albert	X8460	Nov. 13, 1981.
Chicago Zool Park	X8485	Nov. 3, 1981.
Univ. of Colo.	X8500	Nov. 19, 1981.
Museum.		
Cleveland Metroparks	X8554	Nov. 18, 1981.

Dated: December 8, 1981.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office

[FR Doc. 81-35933 Filed 12-15-81; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species and Marine Mammal Permit; Receipt of Application for Permit

Notice is hereby given that an applicant has applied in due form for a permit to take West Indian manatees as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C.

1374(c)], and the regulations governing the taking and importing of marine mammals (50 CFR Part 18), and the Endangered Species Act of 1973 (16 U.S.C. 1539[a]), and the regulations governing the taking of endangered species (50 CFR Part 17).

1. Applicant:

a. Name: Dr. John R. Fletemeyer.
b. Address: Oceanographic Center, Nova University, Dania, Florida 33004.

2. Type of permit: Take for possible harassment.

3. Name and number of animals: West Indian manatees, unlimited (*Trichechus manatus*).

4. Type of Activity: To observe manatees at close range and to photograph manatees as part of a behavior and movement study, and to document identification of individual specimens.

5. Location of Activity: Broward County, Florida.

6. Period of Activity: 2 years.

The purpose of this application is to conduct a behavioral and population distribution study of manatees in Broward County, Florida. Photographs will be taken in an attempt to establish an identification record of animals in the study area.

Concurrent with the publication of this notice in the *Federal Register* the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-8663. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, USFWS, Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203, on or before January 15, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours in Room 605, 1000 North Glebe Road, Arlington, Virginia.

Dated: December 11, 1981.

Robert Batky,
Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

PR Doc. 81-35932 Filed 12-15-81; 8:45 am

BILLING CODE 4310-55-M

Office of the Secretary

[516 DM 6, Appendix 9]

National Environmental Policy Act Revised Implementing Instructions for Bureau of Reclamation

AGENCY: Interior.

ACTION: Notice of proposed revised instructions for the Bureau of Reclamation.

SUMMARY: This notice proposes revisions and additions to the actions categorically excluded from the NEPA process for the Bureau of Reclamation. The current categorical exclusions were published in the *Federal Register* on July 17, 1980. [45 FR 47944].

DATE: Comments due by February 1, 1982.

ADDRESS: Comments to J. Robinson West, Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, DC 20240; Telephone (202) 343-3891. For Bureau of Reclamation contact Al Jonez; Telephone (202) 343-4991.

SUPPLEMENTARY INFORMATION: This is a proposed revision of section 9.4 of Appendix 9 to Chapter 6 Part 516 of the Departmental Manual (516 DM 6, App. 9.4). It revises and adds to the categorical exclusions previously published in the *Federal Register* on July 17, 1980 [45 FR 47944]. The categorical exclusions must be taken in conjunction with the Department's NEPA procedures (especially 516 DM 2) which were published in the *Federal Register* on April 23, 1980 [45 FR 47941].

These proposed revised and added categorical exclusions are based on continued experience with the NEPA process. They will result in a reduction in unnecessary paperwork for actions which have not in the past and will not in the future cause significant environmental impacts. Reviewers are reminded that the Departmental exceptions listed in 516 DM 2.a(3) apply to these revisions and additions.

Comments on this proposal are invited. To be considered in the preparation of the final revision, comments must be received by February 1, 1982.

Dated: December 11, 1981.

Bruce Blanchard,
Director, Environmental Project Review.

The following revisions and additions are proposed:

9.4B Planning Activities

(3) [New] Data collection studies that involve test excavations for cultural resource investigations, or test pitting, drilling, or seismic investigation for geologic exploration purposes where the impacts are expected to be minor and localized.

9.4C Project Implementation Activities

(2) [Revised] Minor acquisition of land and rights-of-way or easements.

(3) [Revised] Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities.

(4) [New] Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

9.4D Operation and Maintenance Activities

(1) [Revised] Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, but no material change in location or operation.

(2) [Revised] Transfer of the operation and maintenance activities of Federal facilities to water districts, recreation agencies, fish and wildlife agencies, or other entities where the anticipated operation and maintenance activities are agreed to in a contract, or memorandum of agreement, follow approved Reclamation policy, and no major change in operations and maintenance is anticipated.

(4) [Revised] Approval, execution, and implementation of water service contracts for minor amounts of long-term water use, or temporary or interim water use, where the action does not lead to long-term changes.

(13) [New] Follow-on actions such as access agreements, contractual arrangements, and operational procedures, for hydropower facilities permitted or licensed by the Federal Energy Regulatory Commission (FERC) which are on or appurtenant to Bureau facilities or lands, when FERC has demonstrated compliance with NEPA and when the Bureau's environmental concerns have been accommodated in accordance with the BR/FERC Memorandum of Understanding of June 22, 1981.

(14) [New] Approval renewal, transfer, and execution of an original, amendatory, or supplemental water service or repayment contract where the only result will be to implement an administrative or financial practice or change.

(15) [New] Approval and execution of contracts requiring the repayment of funds furnished or expended on behalf of an entity pursuant to the Emergency Fund Act of June 26, 1948 (62 Stat 1052).

(16) [New] Minor safety of dams construction activities where the work is confined to the dam or appurtenant features and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

(17) [New] Approval of second party water sales agreements for small amounts of water usually less than 10 acre-feet where the Bureau has an existing water sales contract in effect.

9.4E Grant and Loan Activities

(1) [New] Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.

(2) [New] Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities and the work is considered minor.

(3) [New] Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or development activities and the work is considered minor.

[FR Doc. 81-35971 Filed 12-15-81; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 81-31646 appearing at page 54419, in the issue of Monday, November 2, 1981, make the following correction:

On page 54422, third column, under "MC 149042 (Sub-2)" JBT Services, Inc., second to last line "MI, MN, IA, IL, OH" should be changed to read "MI, MN, IA, IL, IN, OH".

BILLING CODE 1505-01-M

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

December 11, 1981.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intended to perform nonmember, non-exempt, interstate transportation must file the Notice, form BOP-102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Office of Consumer Protection, Washington, D.C. 20423. The Notices are filed in Ex Parte No. MC-75 (Sub No. 1) and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

1. Southern States Cooperative, Inc. (Complete Legal Name of Cooperative Association or Federation of Cooperative Associations).
6606 W. Broad St., P.O. Box 26234, Richmond, VA 23260 (Principal Mailing Address (Street No., City, State, and Zip Code)).

6606 W. Broad St., P.O. Box 26234, Richmond, VA 23260 (Where Are Records of your Motor Transportation Maintained (Street No., City, State and Zip Code)).

Mack T. Ruffin, III, P.O. Box 26234, Richmond, VA 23260 (Person To Whom Inquiries and Correspondence should be Addressed (Name and Mailing Address)).

2. Tennessee Farmers Cooperative (Complete Legal Name of Cooperative Association or Federation of Cooperative Associations).

P.O. Box 157, LaVergne, TN 37086. (Principal Mailing Address (Street No., City, State, and Zip Code)).

P.O. Box 157, LaVergne, TN 37086 (Where Are Records of your Motor Transportation Maintained (Street No., City, State and Zip Code)).

Joe L. Wright, P.O. Box 157, LaVergne, TN 37086 (Person To Whom Inquiries and Correspondence should be

Addressed (Name and Mailing Address)).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35608 Filed 12-15-81; 8:45 am]

BILLING CODE 7035-01-M

Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Number 3, Krock, Joyce and Dowell.

MC-FC-79468. By decision of November 27, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R., Part 1132, Review Board Number 3, approved the transfer to AG TRUCKING, INC., of Goshen, IN, of Certificate No. MC-145764 (Sub-No. 2F), issued to C & E TRANSPORT, INC., of Bremen, IN, authorizing the transportation of: *salt*, from the facilities of Domtar Industries, Inc., Sifto Salt Division, at (a) Chicago, IL; (b) St. Joseph, MI; (c) Toledo, OH; (d) Burns Harbor, IN; and (e) St. Joseph County, IN, to points in IN, and MI. Representative: Paul D. Borghesani, Suite 300, Communicana Bldg., 421 So. Second St., Elkhart, IN 46516, (219) 293-3597.

Note.—TA leases sought. Transferee is a carrier holding authority issued in Docket No. MC-13367.

MC-FC-79484. By decision of November 25, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R., Part 1132, Review Board Number 3, approved the transfer to CRAZY DAISY CORPORATION, of Elkhart, IN, of Certificate Nos. MC-149404; MC-149404 (Sub-No. 1); MC-143320 (Sub-No. 3); and Permit No. MC-143320 (Sub-No. 2), issued to POTAWATOMI TRAILS, INC., authorizing the transportation of (a) *such commodities* as are dealt in or used by the manufacturers and distributors of mobile homes, buildings in sections and recreational vehicles (except commodities in bulk, in tank vehicles), between points in Elkhart County, IN, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii) with certain restrictions; (b) *storage tanks and pressure vessels*, between points in Hamilton County, OH and Grayson County, KY, on the one hand, and, on the other, points in the United States; (c) *such commodities* as are used in the manufacture and distribution of mobile homes, building in sections, and recreational vehicles (except commodities in bulk) between points in the United States (except Alaska and Hawaii) with certain restrictions; and (d) *tools and hardware*, between the facilities utilized by G.M. Distributors, Inc., or G.M. Industrial Corp., at or near Elkhart, IN., Woodland and Anaheim, CA, Denver, CO, Newton, KS, Boise, ID, Salem, OR, Ft. Worth, TX, Marshfield, WI, and Redwood Falls, MN, under a continuing contract(s) with G.M. Distributors, Inc., and G.M. Industrial Corp., of Elkhart, IN, respectively. Representative: Paul D. Borghesani, Suite 300, Communicana Bldg., 421 So.

Second Street, Elkhart, IN 46516, (219) 293-3597. No TA leases sought. Transferee is not a carrier.

MC-FC-79488. By decision of December 3, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to M.D. ASSOCIATES of Jacksonville, FL, of Certificate No. MC-145716 (Sub-No. 2F), issued to INTERNATIONAL TRANSPORTATION SERVICE, INC., of Atlanta, GA, authorizing the transportation of (1) *malt beverages* (except in bulk), from the facilities of Miller Brewing Company, at or near Albany, GA, to those points in the United States in and east of TX, OK, KS, NE, IA, and MN; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of malt beverages, from points in the United States in and east of TX, OK, KS, NE, IA, and MN, to facilities of or used by Miller Brewing Company at points in GA. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202.

Notes.—TA has not been filed. Transferee does not hold any authority from this Commission.

MC-FC-79498. By decision of December 3, 1981 Review Board Number 3 approved the transfer to NOAH E. FERRIS, d.b.a. CONTRACT FURNITURE CARRIERS, of Roanoke, VA, of Certificate No. MC-150011 (Sub-No. 1F), issued to SOUTHWEST QUALITY FOODS, INC., of Wytheville, VA authorizing: *foodstuffs, paper and plastic articles, cleaning and washing compounds and other named commodities*, from and to named points in MD, IL, VA, NC, KY, and IN. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. TA lease is not sought. Transferee is not a carrier, but has authority pending.

MC-FC-79500. By decision of December 3, 1981, Review Board 3 approved the transfer to ORVILLE H. ANDERSON, d.b.a. ELLIOTT TRANSFER COMPANY, of Fergus Falls, MN, of Certificate No. MC-87178 issued to PERRY L. NETTBROOK, d.b.a. ELLIOTT TRANSFER COMPANY (Katherine I. Nettbrook, Administratrix), of Fergus Falls, MN, authorizing: *household goods*, between Fergus Falls, MN, on the one hand, and, on the other, points in ND and SD. Condition: Katherine Nettbrook must submit appropriate legal documentation that she is administratrix of the estate of Perry L. Nettbrook. Representative: Gene P. Johnson, P.O. Box 2471, Fargo,

ND 58101. TA lease is not sought. Transferee is not a carrier. Agatha L. Mergenovich, Secretary.

[FR Doc. 81-35887 Filed 12-15-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The

unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-2-236

Decided: December 7, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 64932 (Sub-621), filed November 16, 1981. Applicant: ROGERS CARTAGE CO., 10735 South Cicero Avenue, Oak Lawn, IL 60453. Representative: Marc J. Blumenthal, 29 South LaSalle St., Suite 905, Chicago, IL 60603, (312) 425-1642. Transporting *general commodities* in bulk, between points in the U.S., under continuing contract(s) with Exxon Chemical Americas, of Houston TX.

MC 69833 (Sub-185), filed November 17, 1981. Applicant: ASSOCIATED TRUCK LINES, INC., 200 Monroe Avenue, NW., 6th Floor, Grand Rapids, MI 49503. Representative: Harry Pohlard (same as applicant), (616) 456-2868. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Ford Motor Company, of Dearborn, MI.

MC 106603 (Sub-222), filed November 16, 1981. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain St., SW., P.O. Box 8099, Grand Rapids, MI 49508. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167, (313) 349-3980. Transporting *construction materials* between points in Erie County, OH, on the one hand, and, on the other, points in CT, MA, ME, NH, RI and VT.

MC 121683 (Sub-12), filed November 24, 1981. Applicant: JACKSON EXPRESS, INC., P.O. Box 3310, Jackson, TN 38301. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY

42101, (502) 781-4446. Transporting *general commodities* (except classes A and B explosives), between points in Madison County, TN, and Lee, and Alcorn Counties, MS, on the one hand, and, on the other, points in AL, AR, FL, GA, KS, LA, MN, NC, SC, VA, WV, and those in KY on and east of U.S. Hwy 31-W.

MC 125522 (Sub-12), filed September 22, 1981. Applicant: SUNBURY TRANSPORT, LIMITED, P.O. Box 3217, Station B, Fredericton, New Brunswick, Canada E3A 5G9. Representative: Fritz R. Kahn, Suite 1100, 1660 L St., N.W., Washington, DC 20036, 202-452-7400.

Transporting *general commodities* (except classes A and B explosives), between points in ME, VT, NH, MA, RI, NY, CT, NJ, PA, MD, DE, WV, VA, NC, SC, GA, FL, AL, MS, TN, KY, OH, IN, IL, WI, MN, IA, MO, MI and DC.

MC 140442 (Sub-2), filed November 27, 1981. Applicant: HASLERIG TRUCKING CO., INC., Rte. 1, Box 47, Rock Spring, GA 30739. Representative: Ronald W. Haslerig (same address as applicant), 404-931-2799. Transporting *fertilizer and fertilizer materials*, between points in the U.S., under continuing contract(s) with Southern States Cooperative, Inc., of Richmond, VA.

MC 148402 (Sub-41), filed November 24, 1981. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (same address as applicant), 901-423-2408. Transporting *paper and paper products*, between Palatka, FL, on the one hand, and, on the other, points in the U.S.

MC 147832 (Sub-10), filed November 17, 1981. Applicant: JIM EDDLEMAN, d.b.a. J & J CATTLE CO., 3395 Wright St., Wheatridge, CO 80033. Representative: James A. Beckwith, 1365 Logan St., Suite 100, Denver, CO 80203, (303) 861-4273. Transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses* (except commodities in bulk), between points in AL, AZ, CA, CO, FL, GA, IA, IL, KS, LA, MS, NE, OR, TN, TX and WA.

MC 149333 (Sub-5), filed November 24, 1981. Applicant: RICKY SHAW & SONS TRANSPORTATION COMPANY, INC., 500 Bennington, Kansas City, MO 64125. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, 816-842-8600. Transporting (1) *acid-proof brick, face brick, brick pavers, and clay floor tile*, between points in Columbia and Stark Counties, OH, Livingston County, MO, and Jefferson County, NE, on the one hand, and, on the other, points in the U.S., and (2) *lumber, wood, and forest*

products, between points in NV and CA, on the one hand, and, on the other, points in ND, SD, NE, MN, LA, MO, AR, WI, IL, MI, IN, KY, TN, MS, AL, FL, OH, NY, PA, WV, VA, NC, SC, ME, NH, VT, MA, CT, RI, NJ, DE, IA, and MD.

MC 153652, filed November 13, 1981. Applicant: RAINIER PACIFIC SUPPLY, INC., 1105 Tracy Dr., SE., Lacey, WA 98503. Representative: Richard Joseph Noel, 3904 18th Ave., NE., Olympia, WA 98506, (206) 491-8060. Transporting *sheetrock, sheetrock and mud supplies, lumber, shakes, roofing materials, insulation, glass, nails, and metal beads*, between points in WA, on the one hand, and, on the other, points in CA.

MC 158933, filed October 22, 1981, published in the *Federal Register* issue of November 12, 1981, and republished, as corrected, this issue. Applicant: J. THOMAS, INC., 416 Gra-Roy Dr., Goshen, IN 46526. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 S. Second St., Elkhart, IN 46516, 219-293-3597. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Mastercraft Vans, Inc., of New Paris, IN, New Paris Enterprises, Inc., of New Paris, IN and Tech-Trans, Inc., of Bristol, IN. The purpose of this republication is to include household goods as an exception.

MC159112, filed November 5, 1981. Applicant: BEVERAGE TRANSPORT & WAREHOUSING, INC., 3550 NW 110th St., Miami, FL 33168. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, 414-722-2848. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Beverage Canners, Inc., of Miami, FL.

MC159413, filed November 24, 1981. Applicant: TOWN & COUNTRY TRANSPORTATION AND LEASING CORP., 290 Market St., Warren, RI 02885. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108, (617) 742-3530. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and character operations, between points in MA and RI, on one hand, and, on the other, points in the U.S.

MC159512, filed December 1, 1981. Applicant: HENDERSON BUS SERVICE, 3735 Jay St., NE., Washington, D.C. 20019. Representative: Milton R. Henderson, Sr., (same address as applicant), (202) 399-5280. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, between points

in the Washington, D.C. Commercial Zone, as defined by the Commission, on the one hand, and, on the other, points in the U.S.

Vol. No. OPY-2-237

Decided: November 25, 1981.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Forties.

MC95813 (Sub-21), filed November 16, 1981. Applicant: SHUMAKER TRUCKING COMPANY 601 U.S. Rte. 15 North, Dillsburg, PA 17019. Representative: David Shumaker (same address as applicant), 717-432-9617. Transporting *building materials and construction materials* (1) between points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC, and (2) between the facilities of CertainTeed Corporation at points in the U.S., on the one hand, and, on the other, those points in the U.S., in and east of MN, IA, MO, AR, and LA.

MC128662 (Sub-7), filed November 13, 1981. Applicant: STICKLEY'S GARAGE, INC., P.O. Box 2842, Winchester, VA 22601. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, 301-797-6060. Transporting *food and related products*, between points in the U.S. under continuing contract(s) with Bowman Apple Products Company, Inc., of Mt. Jackson, VA, and Shenandoah Apple Cooperative and National Fruit Product Company, Inc., both of Winchester, VA.

MC 129712 (Sub-64), filed November 16, 1981. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Guy H. Postell, Suite 713, 3384 Peachtree Rd., NE, Atlanta, GA 30326, 404-237-6472. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Armstrong World Industries, Inc., of Lancaster, PA.

MC 148183 (Sub-46), filed November 17, 1981. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline E. Myers, Suite 348, Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004-1879, 202-737-2188. Transporting *paint and related products*, between points in Fulton and Hall Counties, GA, Reading, PA, and Huron and Wickliffe, OH, on the one hand, and, on the other, points in AL, FL, GA, IL, IN, MO, MS, NC, OH, PA, SC, TN, VA, and WV.

MC 159143, filed November 4, 1981. Applicant: HUSKER EXPRESS, INC., P.O. Box 126, Seward, NE 68434. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501, 402-475-

6761. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in Butler, Cass, Colfax, Gage, Lancaster, Otoe, Platte, Polk, Saline, Saunders, Seward, and York Counties, NE., on the one hand, and, on the other, points in NE.

MC 159253, filed November 12, 1981. Applicant: GLH TOURS, INC., 215 West Pomona Blvd., Monterey Park, CA 91754. Representative: Vernon H. Hunter (same address as applicant), 213-725-0552. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round trip charter operations, between points in CA, on the one hand, and, on the other, points in the U.S.

MC 159322, filed November 17, 1981. Applicant: DAVID JONES, d.b.a. JONES GOSPEL SINGERS BUS, P.O. Box 1461, Hilton Head Island, SC 29938. Representative: David Jones (same address as applicant), 803-785-3961. Transporting *passengers and their baggage*, in the same vehicle with passengers, between points in Beaufort County, SC, and Chatham County, GA.

MC 159363, filed November 19, 1981. Applicant: RON BARNHART, d.b.a. BARNHART TRUCKING, 8838 Quail Trail, Terre Haute, IN 47805. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317-846-6655. Transporting (1) *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in Vigo County, IN, on the one hand, and, on the other, points in IL, OH, MI, KY, PA, MO, IA, WI, TN, KS, CO, TX, VA, and SC, and (2) *paper and related products*, between Chicago, IL, on the one hand, and, on the other, points in Vermillion County, IN.

Volume No. OPY-3-224

Decided: December 10, 1981.

By the Commission, Review Board No. 2, members Carleton, Fisher, and Williams.

MC 105984 (Sub-35), filed November 30, 1981. Applicant: JOHN B. BARBOUR TRUCKING COMPANY, a corporation, P.O. Box 577, Iowa Park, TX 76367. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116, (817) 731-8431. Transporting *Mercer Commodities*, between points in the U.S. (including AK but excluding HI).

MC 108185 (Sub-57), filed November 30, 1981. Applicant: JACK COLE DIXIE HIGHWAY COMPANY, 215 S. 11th St., Minneapolis, MN 55403. Representative: Robert P. Sack, P.O. Box 0010, West St. Paul, MN 55118, (612) 457-8889. Transporting *metal products*, between

points in Cobb County, GA, on the one hand, and, on the other, points in Dade, Volusia, and Manatee Counties, FL.

MC 120364 (Sub-41), filed November 30, 1981. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Rd., Rockford, IL 61109. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703, (608) 256-7444. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Chemetron Railway Products, Inc., Orgotherm, Inc., and Allegheny International all of Chicago, IL.

MC 133314 (Sub-12), filed November 30, 1981. Applicant: SILVAN TRUCKING COMPANY, INC., R.R. 2, Box 137, Pendleton, IN 46064. Representative: Walter F. Jones, Jr., 1111 East 54th St., Indianapolis, IN 46220, (317) 257-4066. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with United Freight, Inc., of Morrow, GA.

MC 134183 (Sub-1), filed November 30, 1981. Applicant: GAMBRINUS TRUCKING CO., INC., Sandri Drive, Plymouth, MA 02360. Representative: Francis E. Barrett, Jr., 10 Industrial Park Rd., Hingham, MA 02043, (617) 749-6500. Transporting *general commodities* (except classes A and B explosives household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contracts with (1) L. Knife & Sons, Inc., of Plymouth, MA, and (2) Seaboard Products Inc., of Danvers, MA.

MC 138634 (Sub-4), filed November 30, 1981. Applicant: MARSHALL MOTOR COACH, INC., 1409 E. Anson, Marshalltown, IA 50158. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282-3525. Transporting *food and related products*, between points in Marshall County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143204 (Sub-3), filed November 24, 1981. Applicant: CITY TRANSFER COMPANY, INC., 1634 W. First St., Owensboro, KY 42301. Representative: William L. Willis, Suite 701, McClure Bldg., Frankfort, KY 40601, (502) 227-7384. Transporting *alcoholic beverages*, between points in Daviess County, KY, on the one hand, and, on the other, Redstone Arsenal, AL, Miami, FL, Atlanta, GA, Rochester, NY, Dallas, TX, and points in Orange County, FL, Kane and Madison Counties, IL, Randolph,

Grant and Allen Counties, IN, Hall County, NE, Allegheny County, PA, Davidson County, TN, Bexar County, TX and Wood County, WV.

MC 143214 (Sub-8), filed December 1, 1981. Applicant: MATUSZKO TRUCKING, INC., 19 Ball Lane, North Amherst, MA 01059. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, (413) 732-1136. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with All Freight Distributors, Inc., of Sunderland, MA.

MC 144225 (Sub-4), filed November 27, 1981. Applicant: JADEL TRUCKING, INC., 8333 W. McNab Rd., Tamarac, FL 33321. Representative: Raymond P. Keigher, 401 E. Jefferson St., Suite 102, Rockville, MD 20850, (301) 424-2420. Transporting *lumber and wood products*, between points in Hampden County, MA, on the one hand, and, on the other, points in AL, FL, GA, IN, KY, ME, MS, NH, NC, OH, RI, SC, TN, VT, and WV.

MC 144645 (Sub-12), filed December 2, 1981. Applicant: ROBERT HANSEN TRUCKING, INC., Route 2, Box 125, Delavan, WI 53115. Representative: Daniel R. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203, (414) 273-7410. Transporting (1) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Andes Candies, Inc., of Delavan, WI, (2) *paper and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with School Stationers Corporation, and Glennco Paper Mfg., Inc., d/b/a Glennco, Inc., both of Oshkosh, WI, and *plastic products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Penda Corporation, of Portage, WI.

MC 145964 (Sub-7), filed November 27, 1981. Applicant: MELBA S. POWELL, d.b.a., C.B.M. TRANSPORT, 922 S. 2300 East, Salt Lake City, UT 84108. Representative: Blaine Powell, 2759 Venar Circle, Salt Lake City, UT 84109, (801) 484-5316. Transporting *chemicals and related products*, between points in Sweetwater County, WY, on the one hand, and, on the other, points in CA.

MC 146124 (Sub-1), filed November 24, 1981. Applicant: ROBINSON TERMINAL WAREHOUSE CORPORATION, 2 Duke Street, Alexandria, VA 22313. Representative: Terrence D. Jones, 2033 K Street, N.W., Washington, DC 20006, (202) 223-8270. Transporting *pulp, paper and related products and printed matter*, between Alexandria, VA, and points in Fairfax County, VA, on the one hand,

and, on the other, points in MD, PA, VA, and DC.

MC 148195 (Sub-3), filed November 30, 1981. Applicant: LEON FUCHS, Templeton, IA 51463. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244-2329. Transporting *iron and steel articles*, between Sterling, Hennepin, and Chicago, IL, St. Louis and Kansas City, MO, Kansas City, KS, and Norfolk, NE, on the one hand, and, on the other, points in Denver, Colorado Springs, and Greeley, CO.

MC 153484, filed November 27, 1981. Applicant: JACK C. GRANT, d.b.a., VEHICLE DELIVERY SERVICE, 1752 Brown Trail, Hurst, TX 76053. Representative: Jack C. Grant, (same address as applicant), (817) 268-0793. Transporting *wrecked, disabled and repossessed motor vehicles*, in drive-away or tow-away service, between points in AR, TX, LA, OK and NM, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158384, filed November 30, 1981. Applicant: TRANSPOR, INCORPORATED, 9 Mill Plain Rd., Danbury, CT 06810. Representative: Sidney J. Leshin, 3 East 54th St., New York, NY 10022, (212) 759-3700. Transporting *passengers and their baggage*, in special and charter operations, beginning and ending at points in Fairfield County, CT, and Dutchess, Putnam, and Westchester Counties, NY, and extending to points in the U.S. (except AK and HI).

MC 158615 (Sub-1), filed December 2, 1981. Applicant: LAWSON LINES, INC., 170 Hillsdale Dr., Fayetteville, GA 30314. Representative: Bill R. Davis, Emerson Center, Suite 101, 2814 New Spring Rd., Atlanta, GA 30339, (404) 434-3381. Transporting *food and related products*, between points in GA, on the one hand, and, on the other, points in FL, IL, IA, KS, NY, MI, OH, PA, NC, SC, TX, NJ, WI, NE, MO, CA, CT, IN, LA, CO, and VA.

MC 158744 (Sub-2), filed December 1, 1981. Applicant: H.S.D. TRUCKING, INC., Rt. 5, Box 5, Edgerton, WI 53534. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, (608) 273-1003. Transporting *fertilizer and fertilizer ingredients*, in bulk, between points in the U.S. (except AK and HI), under continuing contract(s) with Terra Chemicals International, Inc. and Terra Eastern Corporation of Sun Prairie, WI.

MC 159304, filed November 30, 1981. Applicant: INTERMOUNTAIN TRANSIT HOMES, INC., R.R. #1, Box 104-C, Inkom, ID 83245. Representative:

Eldon E. Bresee, 2881 East 3400 South, Salt Lake City, UT 84109, (801) 485-5154. Transporting (1) *mobile homes, buildings, building sections, and modules*, and (2) *parts and accessories*, for mobile homes, buildings, building sections, and modules, in initial and secondary movements, between points in CO, ID, NV, and WY.

MC 159335, filed November 30, 1981. Applicant: INTERMODAL CARRIERS, INC., 2815 Gaston Ave., Dallas, TX 75226. Representative: Edwin M. Snyder, P.O. Box 45538, Dallas, TX 75245, (214) 358-3341. Transporting *such commodities as are dealt in or used by department stores*, between Dallas, Waco, Killeen, Temple, Austin and San Antonio, TX.

MC 159395 (Sub-1), filed November 30, 1981. Applicant: GILMAR CRANE SERVICE ALBERTA, LTD., 3208-3rd Ave., S., P.O.B. 871, Lethbridge, AB, Canada T1J3Z8. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111, (801) 531-1300. In foreign commerce only, transporting *machinery and metal products*, between ports of entry on the international boundary line between the U.S. and Canada at WA, ID, MT and ND, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159454, filed November 27, 1981. Applicant: KANEN TOURS, 10350 So. DeAnza Blvd., Cupertino, CA 95014. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986-8896. As a *broker* at Cupertino, CA, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special or charter operations, beginning and ending at points in CA in and north of San Luis Obispo, Kern and Inyo Counties, CA, and extending to points in the U.S. (excluding AK and HI).

MC 159464, filed November 27, 1981. Applicant: HOWARD & GLADYS ERDLEY, d.b.a. CARAVEL TRAVEL, 8600 Sepulveda Blvd., Suite 3, Sepulveda, CA 91343. Representative: Gladys Erdley (same address as applicant), (213) 892-7129. As a *broker*, at Sepulveda, CA, in arranging for the transportation of *passengers and their baggage*, by motor vehicle, beginning and ending at points in CA, and extending to points in NV, UT, and AZ.

MC 159474, filed November 30, 1981. Applicant: U.S. EXPRESS, INC., P.O. Box 9652, Little Rock, AR 72219. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333-1341. Transporting *general commodities* (except classes A and B explosives, household goods, and

commodities in bulk), between the facilities of Ralston Purina Company and its subsidiaries, at points in the U.S., on the one hand, and, on the other, points in the U.S. (excluding AK and HI).

MC 159475, filed November 30, 1981. Applicant: HOLIDAY TRAVEL, INC., 5418 Pernod, St. Louis, MO 63139. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. As a broker, at St. Louis, MO, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, beginning and ending at point in MO, and extending to points in the U.S.

MC 59494, filed November 30, 1981. Applicant: JO-ANN TRUCKING, LTD., 428 Second St., W., Brooks Professional Bldg., Brooks, Alberta, Canada T0J 0J0. Representative: Dale E. Isley, 50 S. Steele St., Suite 330, Denver, CO 80209, (303) 320-6100. Transporting *Mercer commodities and metal products* between points in MT, ID, WY, UT, CO, NM, TX, LA, KS, NE, SD, ND, and OK.

MC 159505, filed November 30, 1981. Applicant: KRT ENTERPRISES, INC., 4611 St. Johns Ave., Jacksonville, FL 32210. Representative: Kenneth R. Thomas, 3742 Ponce de Leon Ave., Jacksonville, FL 32217, (904) 731-2684. Transporting *bakery products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Pantry Pride Enterprises, Inc., of Jacksonville, FL.

Vol. No. OPY-4-475

Decided: December 9, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Carleton not participating).

MC 143776 (Sub-37), filed December 1, 1981. Applicant: C.D.B. INCORPORATED, 155 Spaulding Ave., S.E., Grand Rapids, MI 49506. Representative: C. Michael Tubbs (same address as applicant), (800) 253-9527. Transporting *paper and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Wilder Industries, Incorporated, of Philadelphia, PA.

MC 149536 (Sub-4), filed December 1, 1981. Applicant: RODCO LEASING, INC., 380 Union St., West Springfield, MA 01089. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103, (413) 781-8205. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, DE, ME, MD, MA, NH, NY, NJ, PA, RI, VT, and DC.

MC 155186 (Sub-1), filed December 1, 1981. Applicant: FREITAG ASSOCIATES, INC., 6917 Harford Rd., Baltimore, MD 21234. Representative: Robert K. Goren, Suite 1025, 1875 I St., NW., Washington, D.C. 20006, (202) 463-6400. Transporting (1) *dairy products*, between Baltimore, MD, and points in Franklin County, PA, on the one hand, and, on the other, points in Dade County, FL, Orleans County, LA, Clark County, NV, Denver County, CO, King County, WA, Maricopa County, AZ, Salt Lake County, UT, and points in TX; and (2) *fabricated metal products*, between points in Harford and Carroll Counties, MD, on the one hand, and, on the other, Detroit, MI, Minneapolis, MN, Chicago, IL, St. Louis, MO, Portland, OR, Washington, D.C., and points in Lenawee County, MI, St. Louis, County, MN, San Diego County, CA, Cuyahoga and Hamilton Counties, OH, Marion County, IN, King and Spokane Counties, WA, Orange County, FL, and York and Dauphin Counties, PA.

MC 159496, filed November 30, 1981. Applicant: LLOYD S. BANDLE, d.b.a. L & S TRUCKING, 5742 Crater Lake Ave., Central Point, OR 97502. Representative: Lloyd S. Bandle (same address as applicant), (503) 826-5508. Transporting (1)(a) *lumber and wood products*, (b) *building and construction materials*, and (c) *foundry materials*, between points in AZ, CA, ID, MT, NV, OR, UT, and WA; and (2) *clay and glazing materials*, between points in CA and OR.

MC 159506, filed November 30, 1981. Applicant: H. L. BOWERS CO., INC., 4001 Yancey Rd., P.O. Box 31234, Charlotte, NC 28231. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137, (901) 767-5600. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with Superior Synthetic Fibers, Inc., of Charlotte, NC.

Volume No. OPY-4-476

Decided: December 11, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 99567 (Sub-8), filed November 30, 1981. Applicant: KANE FREIGHT LINES, INC., P.O. Box 931, Scranton, PA 18501. Representative: William F. King, Suite 304, Overlook Bldg., 6121 Lincoln Rd., Alexandria, VA 22312, (703) 750-1112. Transporting *electric storage batteries and parts therefor* between points in Lackawanna County, PA, on the one hand, and, on the other, points in CT, ME, MA, NH, RI, VT and VA.

MC 129827 (Sub-6), filed November 30, 1981. Applicant: BLAIR MOTOR SERVICE, INC., 1531 E. 14th St., St. Louis, MO 63106. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. Transporting *boots and shoes* (1) between St. Louis, MO, on the one hand, and on the other, points in Cape Girardeau and Scott Counties, MO and (2) between points in Gibson County, TN on the one hand, and, on the other, points in Madison County, TN.

MC 136087 (Sub-10), filed November 30, 1981. Applicant: J.C. TRUCKING, INC., 5085 Harlan St., Denver, CO 80212. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264, (303) 861-4028. Transporting *general commodities*, (except classes A and B explosives household goods and commodities in bulk), between points in CO and UT, on the one hand, and, on the other, points in the U.S. in and west of WI, IL, MO, AR, and LA (except AK and HI).

MC 144017 (Sub-3), filed December 1, 1981. Applicant: GEO. W. NOFFS MOVING & STORAGE, INC., 1735 E. Davis Street, Arlington Height, IL 60005. Representative: William Westwood, Jr., (same address as applicant), (312) 870-3200. Transporting *furniture and fixtures* between Chicago, IL and points in Boone, McHenry, Lake, Winnebago, Ogle, Lee, Dekalb, Kane, Dupage, Kendall, Will, Grundy, LaSalle, Bureau, Putnam, Marshall, Woodford, Livingston, McLean, Ford, Iroquois, Kankakee, Vermilion, and Champaign, Counties, IL, Kenosha, Racine, Walworth, Milwaukee, Waukesha, Jefferson, and Rock Counties, WI, Cass, Van Buren, and Berrien Counties, MI, Warren, Benton, Newton, Jasper, Lake, Porter, LaPorte, Starke, Pulaski, White, Carroll, Tippecanoe, Cass, Fulton, Marshall, St. Joseph, Elkhart, and Kosciusko Counties, IN, on the one hand, and, on the other, points in the U.S. (Except AK and HI).

MC 144057 (Sub-3), filed November 24, 1981. Applicant: WHITEHALL TRANSPORT, INC., P.O. Box 387, Whitehall, WI 54773. Representative: Eugene D. Anderson, Suite 428, 910 17th St., NW., Washington, D.C. 20006, (202) 296-2550. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with All American Meat Company, of Whitehall, WI.

MC 149606 (Sub-1), filed November 25, 1981. Applicant: WESTERN COLD EXPRESS, INC., P.O. Box 508, O'Neill, NE 68763. Representative: Marvin J.

Colangelo, 114 Sansome St., San Francisco, CA 94104, (415) 254-2902. Transporting *meat, meat products, meat byproducts, and articles distributed by meat packing houses* (except hides and commodities in bulk), between points in IA, IL, MN, and NE, on the one hand, and, on the other, Oakland and San Francisco, CA.

MC 156766, filed October 26, 1981, previously noticed in the **Federal Register** issue of November 12, 1981, and republished this issue. Applicant: G.A.L. & S. TRUCKING, INC., 25218 463rd Ave. SE., Enumclaw, WA 98022. Representative: Jim Pitzer, 15 S. Grady Way, Ste. 321, Renton, WA 98055, (206) 235-1111. Transporting *aircraft and aircraft parts, and airline terminal equipment*, between points in the U.S., under continuing contract(s) with Transamerica Airlines, of Oakland, CA.

Note.—The purpose of this republication is to correct the commodity description.

MC 159507, filed December 1, 1981. Applicant: PARRAN & SONS BUS RENTAL, INC., d.b.a. PARRAN BUS LINES, 5-F Greenbury Court, Baltimore, MD 21207. Representative: B. Baer, 2018 East Monument St., Baltimore, MD 21205, (301) 327-2120. Transporting *passengers and their baggage*, in round-trip-charter operations, between points in the U.S. (except AK and HI).

MC 159516, filed November 19, 1981. Applicant: LAKEWAY TRANSPORTATION CO., INC., 523 N. Cumberland St., Morristown, TN 37814. Representative: R. Cameron Rollins, 124 Commerce St., Kingsport, TN 37660, (615) 247-7136. Transporting *transportation equipment* between points in TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Agatha L. Mergenovich,
Secretary.

FR Doc. 81-35091 Filed 12-15-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant

or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Notice No. F-173

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 146820 (Sub-II-13 TA), filed December 1, 1981. Applicant: B & G TRUCKING, INC., P.O. Box 581, Worthington, OH 43085. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. *Contract: Irregular, windshield solvent and antifreeze*, between Chicago, IL, on the one hand, and, on the other, Detroit, Lansing and Grand Rapids, MI, Milwaukee, WI and Indianapolis, IN, for 270 days. Supporting shipper: Midwest Polychem, Ltd., 1920 S. Kilbourne Ave., Chicago, IL 60623.

MC 2110 (Sub-II-2), filed November 30, 1981. Applicant: BOWLUS TRUCKING CO., INC., 200 County Rd., Fremont, OH 43420. Representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. *Food and Related Products* between the facilities of the Fremont Company, its divisions and subsidiaries at Fremont, Rockford and Ohio City, OH, Bluffton, IN, Franksville, WI, and Milford, IL, for 270 days. Supporting shipper: The Fremont Company, Fremont, OH.

MC 15624 (Sub-II-ITA), filed December 7, 1981. Applicant: CONTRACT TRUCKERS, INC., 530 Haunted Lane, Cornwells Heights, PA 19020. Representative: Russell S.

Callahan, P.O.B. 1806, Brockton, MA 02403. *Metal products*, from Baltimore City and Baltimore County, MD to points in NJ, NY and PA and to ports of entry on the U.S.-Canada border at points in NY and VT, for 270 days. Supporting shipper(s): Whitney Warehouses, Inc., Baltimore, MD; Mercer's Building Materials Inc., Blue Bell, PA.; Combined Transportation Services, Inc., Baltimore, MD; Giamo Metals, Conshohocken, PA.

MC 150080 (Sub-II-10TA), filed December 2, 1981. Applicant: CONTROLLED CARRIERS, INC., P.O. Box 367, Exton, PA 19341. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740. *Chemicals, materials, supplies and equipment used in the manufacture thereof* between facilities of Emery Industries, Inc., located at or near Mauldin, SC, Lockhaven, PA, Linden, NJ, Santa Fe Springs, CA, Chicago, IL, Elizabeth, NJ, and Worcester, MA, on the one hand, and, on the other, points in the U.S., for 270 days. Supporting shipper: Emery Industries, Inc., P.O. Box 628, Mauldin, SC 29662.

MC 159368 (Sub-II-1TA), filed December 4, 1981. Applicant: DISTRIBUTION EXPRESS, INC., 6836 Prior Pl., Reynoldsburg, OH 43068. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. *General commodities (except Classes A & B explosives)* between Chicago, IL and Indianapolis, IN, on the one hand, and, on the other, points in IN and KY. Applicant intends to interline at Richmond, IN. An underlying ETA seeks 120 days authority. Supporting shipper(s): There is thirteen supporting shippers' statements attached to this application which may be examined at the Phila. Regional office.

MC 159529 (Sub-II-1TA), filed December 2, 1981. Applicant: FOREST GROVE BUS CORP., P.O. Box 364, Forest Grove, PA. Representative: Charles Haigler (same as applicant). *Passengers and their baggage, newspapers, mail and parcels*, in special and charter operations, between Forest Grove, PA, on the one hand, and, on the other, points in the U.S. (except AK & HI) for 180 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 28 supporting shippers. Their statements may be examined in the Philadelphia ICC Office.

MC 153810 (Sub-II-2TA), filed November 24, 1981. Applicant: FOUST TRUCKING, INC., 8466 Crestway, Clayton, OH 45315. Representative: Charles K. Boxwell, First Federal Plaza.

711 Adams St., Toledo, OH 43624. (1) *Metal articles* between points in PA, OH, MI, KY, IN and IL; and (2) *food and related products* between points in OH, on the one hand, and, on the other, points in MI, IN and KY. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are twelve supporting shippers' statements attached to this application that may be examined at the Philadelphia regional office.

MC 107012 (Sub-II-270TA), filed November 30, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as applicant). Contract, irregular: *General commodities (except classes A & B explosives)* between points in the U.S., under continuing contract(s) with Electrovert, Inc., Elmsford, NY for 270 days. Supporting shipper: Electrovert, Inc., 399 Executive Blvd., Elmsford, NY 10523.

MC 14702 (Sub-II-3TA), filed December 1, 1981. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, OH 44482. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Machinery used for the manufacture of iron and steel articles*, from Mahoning County, OH to Jackson, TN and Plymouth, UT, for 270 days. Supporting shipper(s): Riise Engineering Co., Inc., 11950 South Ave., P.O.B. 126, North Lima, OH 44452.

MC 109448 (Sub-II-17TA), filed December 4, 1981. Applicant: PARKER TRANSFER COMPANY, P.O. Box 256, Elyria, OH 44036. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Such commodities as are dealt in or used by manufacturers and distributors of heating and air conditioning units (except commodities in bulk)* between points in Hillsdale County, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI) for 270 days. Supporting shipper: Addison Products Co., 215 North Talbot St., Addison, MI 49220.

MC 159547 (Sub-II-1TA), filed December 3, 1981. Applicant: PONTINO TRUCKING, 3rd and Merion Sts., P.O. Box 208, Bridgeport, PA 19405. Representative: Jerold S. Berschler, 522 Swede St., Norristown, PA 19401. Contract, irregular: *food preserve, used in the manufacture of food products* from Philadelphia, PA to Hialeah, FL, under continuing contract(s) with Theresa Freidman & Sons, Inc. of Philadelphia, PA. An underlying ETA seeks 120 days authority. Supporting shipper(s): Theresa Friedman & Sons,

Inc., Tomlinson Rd. and Jameson Ave., Phila., PA 19116.

MC 147577 (Sub-II-1TA), filed December 2, 1981. Applicant: THRIFT TRANSFER, INC., 4560 Eisenhower Ave., Alexandria, VA 22304. Representative: Richard A. Ward, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. *Such commodities as are dealt in or used by manufacturers and distributors of (1) electronic equipment, parts and accessories, (2) controller parts, (3) metal cabinets, and (4) appliances*, between Baltimore, MD; New York, NY; and Philadelphia, PA, on the one hand, and, on the other, Charlottesville and Salem, VA, for 270 days. Supporting shipper(s): General Electric Co., P.O. Box 8106, Charlottesville, VA 22906.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 159350 (Sub-3-1 TA), filed December 7, 1981. Applicant: LANMAN CORPORATION, 1096 Riverbend Drive, N.W., Atlanta, GA 30339. Representative: Steven A. Lauer, Suite 800, 1019 19th Street, N.W., Washington, D.C. 20036. Contract carrier: Irregular: *Meat and meat products* between points in the U.S. under a continuing contract with Action Commodities Corporation of Stone Mountain, GA. Supporting shipper: Action Commodities Corporation, P.O. Box 1043, Stone Mountain, GA 30086.

MC 146447 (Sub-3-13 TA), filed December 7, 1981. Applicant: TANBAC, INC., 2941 S.W. 1st Terrace, Ft. Lauderdale, FL 33315. Representative: Richard B. Austin, 320 Rochester Building, 8390 N.W. 53rd St., Miami, FL 33166. Contract Carrier, irregular route: *metal products* between Meriden, CT and Martin, TN, on the one hand, and, on the other, points in the U.S. under continuing contract(s) with The Miller Co., Meriden, CT. Supporting shipper: The Miller Co., 99 Center Street, Meriden, CT 06450.

MC 157802 (Sub-3-3 TA), filed December 3, 1981. Applicant: CONTRACT TRANSPORT, INC., P.O. Box 420, Dalton, GA 30721. Representative: Frank D. Hall, Suite 202, 1750 Old Springhouse Lane, Atlanta, GA 30338. Contract carrier: irregular *Such commodities as are used, sold or dealt in by wholesale, retail and variety stores*, between all points in the U.S. under continuing contracts with Esjay Distributors, Inc., Commercial Warehousing, Inc./Columbine Consolidators, Inc., and Tumlin Trucking and Warehouse, Inc.

Supporting Shippers: Esjay Distributors, Inc., P.O. Box 1103, Wilkes Barre, PA 18703; Commercial Warehousing, Inc./Columbine Consolidators, Inc., 316 Bear Creek Road, Dalton, GA 30720; and Tumlin Trucking and Warehouse, Inc., P.O. Box 412, Cartersville, GA 30121.

MC 116014 (Sub-3-3 TA), filed December 7, 1981. Applicant: OLIVER TRUCKING COMPANY, INC., P.O. Box 53, Winchester, KY 40391. Representative: Harry Ross, 58 S. Main St., Winchester, KY 40391. *Glass rods, tubing and related articles* from points in Woodford County, KY to points in NJ and points in Essex County, MA and Hillsborough County, NH. Supporting Shipper: GTE Products Corporation, 1000 Tyrone Pike, Versailles, KY 40383.

MC 146343 (Sub-3-6 TA), filed December 8, 1981. Applicant: SOUTHERN EXPRESS CORPORATION, 505 South Ocean Boulevard, Pompano Beach, FL 33062. Representative: Southern Enterprises Incorporated, 2 Sawyer Drive, Coventry, RI 02816. Contract Carrier: irregular: *General commodities (except class A and B explosives, and household goods as defined by the Commission)*, between points in the U.S. under continuing contract or contracts with Essex Chemical Corporation and subsidiaries, Divisions, Associated or Affiliated Corporations. Supporting shipper: Essex Chemical Corporation, 1401 Borad Street, Clifton, NJ 07015.

MC 159610 (Sub-3-1TA), filed December 8, 1981. Applicant: C. W. BOONE d.b.a. T. Wolf Co., Route 3, Dallas, GA 30132. Representative: J.L. Fant, P.O. Box 577, Jonesboro, GA 30237. Contract carrier: irregular: *General Commodities (except Class A and B explosives)*, between points in the U.S., under continuing contract with Southern Tea Company. Supporting shipper: Southern Tea Company, P.O. Box 7538, Marietta, GA 30066.

MC 37896 (Sub-3-8TA), filed December 9, 1981. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Charles Ephraim, 406 World Center Bldg., 918-16 Street, N.W., Washington, D.C. 20006. Contract Carrier, irregular: *Drugs, medicines and toilet preparations, and materials, equipment and supplies used in the manufacture and distribution of drugs, medicines and toilet preparations*, between Hammonton, NJ and Elkhart, IN, on the one hand, and, on the other, Forest Park, GA and Dallas, TX under continuing contract(s) with Whitehall Laboratories, Division of American Home Products Corporation, of New

York, NY. Supporting shipper: Whitehall Laboratories, Division of American Home Products Corporation, 685 Third Avenue, New York, NY 10017.

MC 147915 (Sub-3-2TA), filed December 9, 1981. Applicant: K.I.T. MOTOR EXPRESS, INC., P.O. Box 4004, Louisville, Kentucky 40204. Representative: Robert R. Harris, 1730 M Street, N.W., Suite 501, Washington, D.C. 20036. *Contract, irregular: Automobile parts, from Coldwater, MI to Toledo, OH and South Bend, IN under continuing contracts with Quality Spring Products, Division of Kuhlman Corporation. Supporting shipper: Quality Spring Products, Division of Kuhlman Corporation, 355 Jay Street, Coldwater, Michigan 49036.*

MC 154103 (Sub-3-23TA), filed December 9, 1981. Applicant: MID-SOUTH MILLING CO., INC., 1229 Kansas, Memphis, TN 38109. Representative: James N. Clay, III, P.O. Box 9508, Memphis, TN 38109. *Gluten feed, gluten meal, wheat midds and soybean meal, in bulk, from points in AL and TN to Union City, GA. Supporting shipper: Ralston Purina Co., P.O. Box 508, Union City, GA 30291.*

The following applications were filed in region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 159037 (Sub-6-1TA), filed November 30, 1981. Applicant: ROBERT & DELLA BUERGER, d.b.a. B & D MACHINERY SERVICES, LTD. Box 116 Elrose, Rosetown, Saskatchewan, CD SOLOZO. Representative: Colin Spencer, 119 First Ave. E. Rosetown, Saskatchewan, CD SOL 2VO. *Used farm machinery parts and related attachments from points in MT and ND to Part of Entry on the International Boundary Line in MT and SD for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Great Plains Auctioneers Ltd., Box 130, White City, Saskatchewan, CD SOG 5BO.*

MC 159502 (Sub-6-1TA), filed November 30, 1981. Applicant: BRAY TRUCKING, INC., P.O. B. 562, Big Piney, WY. Representative: Frank Bray (same as applicant). *Contract Carrier, irregular routes: Machinery, equipment, materials and supplies, used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products and (2) the dismantling, moving and setting-up of rigs, from Big Piney, WY, to points in CO, ID, KS, MT, NE, NV, NM, ND, OK, SD, TX, and UT, for the account of Energetics, Inc., Hageman*

Anchor & Testing Ser. For Woods Petr. corp., Republic Drilling & Service, J.B. Roden Drilling Co., Northwest Pipeline, Mobil Oil Corp., and Chevron U.S.A. Inc., for 270 days. Supporting shipper: There are seven supporting shippers. Their statements may be reviewed at the Regional Office.

MC 149138 (Sub-6-6TA), filed November 27, 1981. Applicant: COLORADO-KANSAS-MISSOURI EXPRESS CO. d.b.a. CKM EXPRESS CO., INC., 4250 Oneida St, Suite 130, Denver, CO 80239. Representative: William J. Lippman, Steele Park, Suite 588, 50 S Steele St, Denver, CO 80209. *Malt beverages and related advertising materials from points in Jefferson County, CO to points in AZ, CA, ID, IA, KS, LA, MS, NE, NV, NM, OK, TN, TX, UT, WA and WY for 270 days. Supporting shipper: Adolph Coors Company, Golden, CO. 80401.*

MC 144855 (Sub-6-1TA), filed December 7, 1981. Applicant: CALIFORNIA EASTERN XPRESS, INC., 1543 Calada Street, Los Angeles, CA 90023. Representative: William J. Monheim, P.O. Box 1758, Whittier, CA 90609. *Meat and meat products, from Guyton, OK; Glenwood, Sioux City, Marshalltown, and Des Moines, IA; to points in IN, MI, AZ, AR, MS, and LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Swift Independent Packing Company, 115 West Jackson Blvd., Chicago, IL 60604.*

MC 146041 (Sub-8-6TA), filed December 3, 1981. Applicant: CAL-TEX, INC., P.O. B. 1678, Costa Mesa, CA 92626. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave., N.W., Washington, DC 20005. *Chemicals (excluding hazardous waste materials) and related products, stiches and clay, between Charlotte NC, and points in its commercial zone, on the one hand and, on the other, points in the U.S. for 270 days. An underlying ETA seeks 120 days authority. Shipper(s): Harper/Love Adhesives Corporation, P.O. B. 11772, 319 Crompton St., Charlotte, NC 282201411.*

MC 159458 (Sub-6-1TA), filed November 25, 1981. Applicant: COAST FREIGHT SYSTEM, INC., 3200 Occidental Ave So., Seattle, WA 98134. Representative: Robert G. Gleason, 1127-10th East, Seattle, WA 98102. *General commodities, between points in WA, OR and ID having had prior or subsequent movement in interstate commerce, for 270 days. Supporting shipper(s): There are ten supporting shippers. Their statements may be examined at the Regional office listed*

MC 159591 (Sub-6-1TA), filed December 4, 1981. Applicant: CORNELL CARTAGE COMPANY, P.O.B. 4331, Denver, CO 80204. Representative: Charles J. Kimball, #665, 1600 Sherman St., Denver, CO 80203. *Commodities dealt in and used by department, auto service, and lawn and garden stores, between Denver, CO and points in its commercial zone, on the one hand, and, on the other, points in WY, UT, and CO, and points in NE and KS on and west of US Hwy 183, for 270 days. Supporting shipper: Sears, Roebuck and Co., Denver, CO.*

MC 159389 (Sub-6-1TA), filed November 30, 1981. Applicant: BRAD DeSPAIN, d.b.a. DeSPAIN CATTLE CO., 16501 W. Manville Rd., Marana, AZ 85238. Representative: Brad DeSpain (same as applicant). *Wheat Middlings, from Ogden, UT to points in AZ for the account of Ralston Purina Co., and Arizona Feeds for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ralston Purina Co., Checkerboard Square, St. Louis MO 63188 and Arizona Feeds, Box 5526, Tucson, AZ 85703.*

MC 151374 (Sub-6-2TA), filed November 27, 1981. Applicant: CAL-CLEVE, LIMITED, d.b.a. DOT-LINE TRANSPORTATION, 8023 E. Slauson Blvd., Montebello, CA 90640. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. *Such commodities as are dealt in, or used by, retail stores or wholesale distributors, (1) Between points in CA, OR, NV, UT, and AZ, on the one hand, and, on the other, points in IL, MI, IN, OH, KY and PA, and, (2) From points in CA to points in OR, for 270 days. Supporting shippers: Prudential-Feldco, Inc., 911 Bixby Dr., City of Industry, CA 91745; Distribution Services, 2242 E. 49th St., Los Angeles, CA 90012; White King, 617 E. 1st St., Los Angeles, CA 90012.*

MC 159103 (Sub-2TA), filed December 3, 1981. Applicant: KEN GEBERT, d.b.a. KEN GEBERT TRUCKING, Mill Creek Rd., Frenchtown, MT 59834. Representative: (Ken Gebert same as applicant). *Contract Carrier, irregular routes: General commodities, including but not limited to new and used metal products and machinery, excluding explosives and hazardous materials, from and to points between CA, OR and WA, extending east to MI and OH, specifically including CA, OR, WA, ID, NV, MT, WY, UT, ND, SD, NE, MN, IA, WI, IL, MI, IN, and OH; for the account of Missoula Surplus & Equipment Company for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Missoula Surplus &*

Equipment Co., 3758 N. Reserve St., Missoula, MT 59801.

MC 147590, (Sub-6-1TA), filed November 30, 1981. Applicant: GOLD STREAK FREIGHT LINES INC., 1855 3rd Ave., Anchorage, AK 99501. Representative: Dalton B. Coor (same address as applicant). *General Commodities*, (except Class A and B explosives and household goods as defined by the commission), for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Environmental Support Services Co., 601 W. 41st St., Suite 103, Anchorage AK 99503; Peninsula Shippers Assoc. Inc., 1907 Post Rd., Anchorage AK 99501; Busby Alaska, 6927 Old Seward Hwy., Anchorage AK 99502.

MC 120853, (Sub-6-1TA), filed November 25, 1981. Applicant: DAVIES TRANSPORTATION CO., d.b.a. HARBOR TERMINAL SERVICES, 2400 Dominguez St., Long Beach, CA 90801. Representative: Arnold Pantus (same address as applicant). *General Commodities excluding: Commodities in bulk, in tank vehicles, Class A and B Explosives and Used household goods* between points and places in CA for 270 days. There are (10) ten supporting shippers. Their statements may be reviewed at the Regional Office.

MC 156436, (Sub-6-2TA), filed December 7, 1981. Applicant: I. W. TRANSPORT, INC., 353 S. Santa Fe Ave., Los Angeles, CA 90013. Representative: Frederick J. Coffman, P.O.B. 1455, Upland, CA 91786. *Contract Carrier*, irregular route: *General commodities* (except classes A and B explosives, hazardous waste materials and used household goods), between points in the US (except AK and HI) to Los Angeles, CA; and from Los Angeles, CA to points in the US in and west of MT, WY, CO and NM under continuing contract with Ben Franklin Distribution Center, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ben Franklin Distribution Center, 3030 S. Atlantic Blvd., Los Angeles, CA 90022.

MC 48958, (Sub-6-11TA), filed November 30, 1981. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., P.O. B. 16404, Denver, CO 80216. Representative: Bill Austin (same address as applicant). *Contract Carrier*; Irregular route: *Telephone and lighting equipment and commodities used in the manufacture thereof*, between points in CA, UT, CO, NM, AZ, NV, and TX for 270 days. Supporting shipper: GTE, Lenkurt, Inc., 1105 Old Country Rd., San Carlos, CA 94070.

MC 157177, (Sub-6-1TA), filed December 2, 1981. Applicant:

INSTANTWHIP-DENVER, INC., 7301 No. Federal Blvd./ Suite 15, Westminster, CO 80030. Representative: Winston A. Holland, P.O. B. 1169, Arvada, CO 80001-1169. *Malt-beverages (beer) and related advertising items* from Denver County and Jefferson County, CO to points in CO for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Adolph Coors Company, Golden, CO 80401.

MC 150892 (Sub-6-2TA), filed November 27, 1981. Applicant: JOHN T. SHARP, d.b.a. J-S RANCH, 125 E. First N., Wellsville, UT 84339. Representative: John T. Sharp (same as above). *Equipment and machinery used in manufacture and production of foodstuffs* between the facilities of Del Monte Corp. at or near Smithfield, UT and Rochelle, IL on the one hand, and on the other, Smithfield, UT and Burley, ID for 270 days. Supporting shipper: Del Monte Corporation, P.O.B. 9260, Ogden, UT.

MC 159401 (Sub-6-1TA), filed November 20, 1981. Applicant: JOHNSON DISTRIBUTORSHIP INC., Route 1, Box 920 AA, Flagstaff, AZ 86001. Representative: Russ Johnson (same as applicant). *General commodities*, (excluding A & B explosives, hazardous waste materials, household goods, commodities in bulk and commodities in tank vehicles) from Phoenix and Flagstaff, Arizona to points in Northern Arizona for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Peobody Coal Co., 1300 S. Yale, Flagstaff, AZ; Babbitts Wholesale, 1400 E. Butler Ave., Flagstaff, AZ; Bank of Northern Arizona, P.O.B. 280, Flagstaff, AZ.

MC 159098 (Sub-6-1TA), filed December 2, 1981. Applicant: PAUL C. MANNING, d.b.a. MANNING CO. TRUCKING, 875 E. Center, P.O.B. 3425, Logan, UT 84321. Representative: Paul C. Manning (same as applicant). *Food Stuffs, wheat middlings, dog food* from points in UT and MN to points in AZ, CO, CA, ID, MN, NE, OR, WA, UT, NV, SD, ND, WY, IA, for 270 days. An underlying Emergency Temporary Authority seeks 120 days authority. Supporting shipper: Pillsbury Company, P.O.B. 9277, Ogden, UT 84409; Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188.

MC 139483 (Sub-6-2TA), filed December 4, 1981. Applicant: ALLEN MITCHEK, P.O.B. 512, Sterling, CO 80751. Representative: Jack B. Wolfe, #665, Capital Life Center, 1600 Sherman St., Denver, CO 80203. *Soybeans and soybean byproducts* from Sergeant Bluff and Sioux City, IA and Lincoln, NE and their commercial zones to the facilities

of Ralston Purina Company at Denver, CO for 270 days. Supporting shipper: Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188.

MC 152361 (Sub-6-1TA), filed November 27, 1981. Applicant: SHANNON MOTOR LINES, INC., 7517 Pivot St., Downey, CA 90421. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212. *Contract Carrier*, irregular routes: *General commodities*, (except classes A and B explosives) between points in the U.S., for the accounts of ABC-Trans National Transport, Inc./Acme Fast Freight, Inc., for 270 days. Supporting shipper: ABC-Trans National Transport, Inc./Acme Fast Freight, Inc., 2110 Alhambra Ave., Los Angeles, CA 90031.

MC 159590 (Sub-6-1TA), filed December 2, 1981. Applicant: SPECIALIZED TRANSPORTATION SYSTEMS, 5080 Amelia Earhart Dr., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. B. 2465, Salt Lake City, UT 84110. *General Commodities*, (except household goods, commodities in bulk and Classes A and B explosives), between points in Salt Lake, Utah and Davis Counties, UT, on the one hand, and points in Uintah County, WY, on the other, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 9 shippers. Their statements may be examined at the Regional Office listed above.

MC 147012 (Sub-6-7TA), filed November 25, 1981. Applicant: T.B.T., INC., P.O. B. 8472, Stockton, CA 95208. Representative: Mark J. Hannon, 1884 W. Willow St., Stockton, CA 95203. *Contract Carrier*; Irregular routes: (1) *Fiberglass products; i.e., bath tubs, stalls, pools, spas, and related plumber fittings*, from Stockton, CA to various points in AZ, ID, NV, OR, UT, and WA, for the account of Dura Glass Products, Inc.; for 270 days. Supporting shipper: Dura Glass Products, Inc., 950 Industrial Dr., Stockton, CA 95206.

MC 151749 (Sub-6-2TA), filed November 30, 1981. Applicant: TRAYLOR TRUCKING, INC., 8108 Coach Dr., Oakland, CA 94605. Representative: Michael Leiden, 3391 Arden Rd., Hayward, CA 94545. *Such commodities as are dealt in by wholesale or retail grocery or food business houses, and equipment materials and supplies used in conduct of such business and structural steel* between all points in CA restricted to traffic having prior or subsequent movement by rail or water for 270 days. Supporting shippers: Safeway Stores, Inc., 5725 E. 14th St., Oakland CA 94660;

Herrick Iron Works, 25450 Clawiter Rd., P.O. B. 3003, Hayward CA 94544.

MC 159565 (Sub-6-1TA), filed December 4, 1981. Applicant: BECCY BRINK, DAVID BRINK, FORREST CHARLESWORTH and RAY SNYDER, d.b.a. UNIVERSAL HOT SHOT SERVICE, P.O.B. 852, Brighton, CO 80601. Representative: Ray Snyder (same as applicant). *Mercer Commodities* between points in Adams, Weld, Denver and Jefferson counties CO on the one hand, and, on the other, points in WY, NE, NM and TX for 270 days. Supporting shippers: There are five (5) supporting shippers and their statements may be reviewed in the Regional Office listed above.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-35089 Filed 12-15-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 209]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: December 11, 1981.

The following restriction removal applications filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the *Federal Register* of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.
Agatha L. Mergenovich,
Secretary.

MC 19714 (Sub-4)X, filed December 3, 1981. Applicant: EDRA HAULAGE, 51-23 34th Street, L.I. City, NY 11101. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Lead and Sub 2: (1) broaden commodity description: groceries and such merchandise as is dealt in by wholesale and retail grocery and food business houses in the lead to "such merchandise as is dealt in or used by grocery and food business houses", and groceries in Sub 2 to "food and related products"; and (2) broaden territorial description: (a) between points in the U.S. under contract(s) with a named class of shippers and with unnamed shippers in the lead, and (b) between points in the US, under contract(s) with a named shipper in Sub 2.

MC 29462 (Sub-1)X, filed November 2, 1981. Applicant: TIDWELL'S EXPRESS, INC., 121 Breman, St. Louis, MO 63147. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102. Lead, broaden (1) by removing exceptions to general commodities authority (except Class A and B explosives) (2) off route points to county wide authority; from Reynolds, Bunker, Centerville, Lesterville, Ellington, Chloride, Middle Brook, Pilot Knob, Graniteville, Belgrade, Mineral Point, Tiff, Bliss, Blackwell, Morse Mill, Cadet, and Vineland, MO to St. Francois, Jefferson, Reynolds, Iron and Washington Counties, (3) to service at all intermediate points on regular routes, and (4) to radial authority.

MC 95376 (Sub-23)X, filed December 7, 1981. Applicant: McVEY TRUCKING, R.R. #1, Box 116, Oakwood, IL 61858. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Subs 10 and 17: (1) broaden (a) concrete coping, Sub 10, and tile and clay products (part 3) and building brick (part 6), Sub 17, to "clay, concrete, glass or stone products"; (b) sand and gravel to "commodities in bulk," Sub 17 (parts 1 and 2); and (c) coal to "coal and coal products," Sub 17 (part 4); (2) change one-way to radial authority, Subs 10 and 17; and (3) change cities to counties: Urbana, IL (Champaign County), Sub 10; and Cayuga, Montezuma and Brazil, IN Vermillion, Parke, and Clay Counties), Sub 17.

MC 109725 (Sub-17)X, filed November 30, 1981. Applicant: K.F. CROCKER TRANSPORTATION COMPANY, INC., Jewell Hill Road, Ashby, MA 01431. Representative: James M. Burns, 1383

Main Street, Suite 413 Springfield, MA 01103. Lead and Subs 11F and 13F to broaden: (1) to "commodities in bulk" from milk, cream and liquid products thereof in bulk in tank vehicles; molasses and liquid feed supplements in bulk in tank vehicles; molasses, for feeding purposes, and liquid feed ingredients in bulk in tank vehicles, lead; molasses and liquid feed supplements in bulk in tank vehicles, Sub 11F; and from wood chips in bulk to "pulp, and paper and related products", Sub 13F, (2) to radial authority, lead, Subs 11F and 13F, (3) city to county-wide authority: from Boston and Everett, MA to Suffolk and Middlesex Counties, lead; Albany, NY to Albany County, Sub 11F; and Ticonderoga, NY to Essex County, in Sub 13F.

MC 115554 (Sub-42)X, filed October 21, 1981, previously noticed in the *Federal Register* of November 10, 1981, republished as corrected this issue. Applicant: HEARTLAND EXPRESS, INC. OF IOWA, P.O. Box 89B, R.R. #6, Iowa City, IA 52240. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Lead and Subs 3, 5, 6, 7, 8, 10, 11, 13G, 14, 15F, 16F, 19F, 23F, 24F, 25F, 27F, 28F, 29F, 30F, 31F, 32F, 35F, and 36F. Broaden to two-way authority, in lead certificate and Sub 5 (regular routes); and to radial authority, in lead and Subs 3, 5, 7, 11, 13G, 16F, 19F, 23F, 24F, 25F, 27F, 28F, 30F, 31F, 35F, and 36F. The purpose of this republication is to include the above, which was inadvertently omitted in the FR publication on November 10, 1981.

MC 123640 (Sub-40)X, filed December 1, 1981. Applicant: SUMMIT CITY ENTERPRISES, INC., 3200 Maumee Avenue, Ft. Wayne, IN 46803. Representative: Irving Klein, 371 Seventh Avenue, New York, NY 10001. Sub-No. 34F permit: broaden territory to all points in the U.S. under continuing contract(s) with a named shipper.

MC 135208 (Sub-6)X, filed November 24, 1981. Applicant: GEORGE L. BIGELOW TRUCKING, INC., P.O. Box 421, Delavan, WA 53115. Representative: Richard A. Westley, P.O. Box 5086, Madison, WI 53705-0086. Sub 2 broaden (1) from laminated wood products to "lumber and wood products"; (2) from Fort Atkinson, WI to Jefferson County, (3) to radial authority; and (4) remove in bulk restriction.

MC 135678 (Sub-35)X, filed November 20, 1981. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, OK 73125. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Subs 6F, 9F,

13F, 14F, 15F, 16F, 19F, 21F and 24F: (1) broaden commodity description: canned good and candies, and wine, in containers, and paint, except in bulk, to "food and related products, and paint" in Sub 21F; (2) eliminate the facilities limitations in Subs 6F, 9F, 13F, 15F, and 16F; (3) broaden territorial description: in Sub 6F, Crawford and Sebastian Counties, AR, for Ft. Smith, AR; Sub 9F, Custer County, OK for Clinton, OK; Alameda County, CA, for Fremont, CA; Santa Clara County, CA, for Milpitas, CA; and Los Angeles County, CA, for Pico Rivera, CA; Sub 13F, Pulaski County, AR, for Little Rock, AR; Sub 14F, Los Angeles County, CA, for Los Angeles, CA; and Oklahoma County, OK, for Oklahoma City, OK; Sub 15F, Los Angeles and Orange Counties, CA, for Azusa, Anaheim and Hawthorne, CA; Deschutes County, OR, for Bend, OR; and Oklahoma County, OK, for Oklahoma City, OK; Sub 16F, Pulaski County, AR, for Little Rock, AR; Sub 19F, Los Angeles and Orange Counties, CA, for Gardena, Downey, Hawthorne, Azusa and Anaheim, CA; Deschutes County, OR, for Bend, OR, and Oklahoma County, OK, for Oklahoma City, OK; and Sub 24F, Oklahoma County, OK, for Oklahoma City, OK; and (4) replace one-way with radial authority.

MC 145966 (Sub-9)X, filed December 4, 1981. Applicant: NELSEN BROS., INC., P.O. Box 813, Nebraska City, NE 68410. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Lead and Subs 2F and 3F certificates, and MC-113382 Subs 15, 19, 24 and 25F permits (1) broaden to "textile mill products" from carpet and carpet samples, lead; to "food and related products (except in bulk)" from non-alcoholic beverages (except in bulk), Subs 2F and 3F; to "rubber and plastic products" from tires and tubes, to "electrical equipment" from batteries, and to "transportation equipment" from wheels, Sub 19; to "food and related products (except in bulk)" from pet food (except in bulk) and to "metal products" from containers Sub 25F; (2) remove plantsite restrictions, lead and Subs 2F and 3F; (3) replace Lincoln with Lancaster County, NE, lead; (4) remove "originating at and destined to" restrictions, lead and Sub 15; (5) to radial authority, lead and Subs 2F and 3F; and (6) to between points in the US under contract(s) with named shippers in Subs 15, 19, 24 and 25F.

MC 147451 (Sub-6)X, filed December 1, 1981. Applicant: RAY J. FORNEY, INC.,

P.O. Box 207, Ashton, IL 61006. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street, NW., Washington, DC 20001.

Subs 2F and 4F. Remove commodities in bulk/tank vehicles restriction; broaden Des Plaines facilities to Cook, DuPage and Lake Counties, IL in Sub 2F, and Ashton and Forrester facilities to Lee and Ogle Counties, IL, in Sub 4F.

MC 148404 (Sub-6)X, filed December 1, 1981. Applicant: UNITED CHEMICAL CARRIERS, INC., 4820 S. Durfee Ave., Pico Rivera, CA 90660. Representative: Robert Fuller, 13215 E. Penn St., Ste. 310, Whittier, CA 90602. Subs 3F, 4F, and 5F: broaden (1) aluminum plates, aluminum sheets, and aluminum blanks to "metal products," Sub 3F; (2) insecticides and pet supplies (except in bulk) to "chemicals and related products and food and related products," Sub 4F; and (3) advertising matter, magazines, periodicals to "printed matter, signs or advertising displays," Sub 5F.

MC 148966 (Sub-9)X, filed December 2, 1981. Applicant: DROTZMANN, INC., P.O. Box 10176, Yakima, WA 98909. Representative: James M. Hodge, 1000 United Central Bank Bldg., Des Moines, IA 50309. Sub 4F, broaden: (1) general commodities, with exceptions to "general commodities (except classes A and B explosives)"; (2) Columbus to Franklin County, OH, and Eugene to Lane County, OR; (3) remove the restriction limiting service to transportation for a named shippers association; and (4) to radial authority.

MC 151170 (Sub-1)X, filed November 20, 1981. Applicant: LONG ISLAND GRAIN CO., INC., P.O. Box 97, Long Island, KS 67647. Representative: William B. Barker, 641 Harrison Street, P.O. Box 1979, Topeka, KS 66601. Lead, remove facilities restriction and broaden to radial authority.

MC 152626 (Sub-1)X, filed November 6, 1981, previously noticed in the FR of November 25, 1981, republished as follows: Applicant: M & D TRUCK LINES, RD #1, Box 346B, Covington, PA 16917. Representative: David Earl Tinker, 1000 Connecticut Ave., NW., Suite 1112, Washington, DC 20036-5391. Lead certificate: Broaden to "food and related products" from malt beverages.

[PR Doc. 81-35890 Filed 12-15-81; 8:46 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-104; Order No. 101]

Certain Card Data Imprinters and Components Thereof; Cancellation of Hearing and Setting Preliminary Conference

Notice is hereby given that the hearing in the above-styled investigation, scheduled to commence on December 14, 1981, is cancelled.

As a result of the Commission Action and Order of December 8, 1981, designating this case "more complicated," a preliminary conference will be held before Administrative Law Judge Donald K. Duvall at 10:30 a.m., on Monday, December 14, 1981, in Suite 201, 1010 Wisconsin Avenue, N.W., Washington, D.C. 20007. The purpose of this conference is to establish a schedule for the permanent exclusion order hearing consistent with the circumstances of this proceeding, to review the status of this investigation, and to resolve any other matters necessary to the conduct of this case.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: December 9, 1981.

Donald K. Duvall,
Presiding Officer.

[PR Doc. 81-35857 Filed 12-15-81; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-104]

Certain Card Data Imprinters and Components Thereof; Designation of Investigation as More Complicated

AGENCY: International Trade Commission.

ACTION: Designation of this investigation as more complicated within the meaning of 19 U.S.C. 1337(b)(1) and 19 CFR 210.15.

AUTHORITY: The authority for Commission designation is contained in section 337(b)(1) of the Tariff Act of 1930, 19 U.S.C. 1337(b)(1), and in § 210.15 of the Commission's Rules of Practice and Procedure, 19 CFR 210.15.

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by AM International, Inc., and Bertizan Corporation, the U.S. International Trade Commission voted on June 4,

1981, to institute an investigation to determine whether there is a violation of section 337(a) of the Tariff Act of 1930, 19 U.S.C. 1337(a), in the importation into the United States of card data imprints and components thereof, or in their sale, by reason of the alleged infringement of claim 7 of U.S. Letters Patent 3,272,120 and claim 12 of U.S. Letters Patent 3,340,800, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of institution of the Commission's investigation was published in the *Federal Register* of June 12, 1981 (46 FR 31094).

On October 28, 1981, the respondents filed a motion (Motion 104-91) to designate the investigation "more complicated," within the meaning of section 337(b)(1) of the Tariff Act of 1930, 19 U.S.C. 1337(b)(1), and § 210.15 of the Commission's Rules of Practice and Procedure, 19 CFR 210.15. The motion was supported by the Commission investigative attorney and was unopposed by the complainant. On November 20, 1981, the presiding officer certified to the Commission his recommendation that investigation No. 337-TA-104 be designated more complicated.

In determining whether an investigation is more complicated, the Commission must find that it "is of an involved nature owing to the subject matter, difficulty in obtaining information, or large number of parties involved." 19 CFR 210.15. In the present investigation, substantial allegations have been raised regarding possible anticompetitive actions and antitrust violations by certain parties. These allegations require an investigation that is beyond the scope of the claims of patent infringement made in the complaint and will likely necessitate extensive additional discovery. In addition, the motion to declare the investigation more complicated is supported by the Commission investigative attorney and is not opposed by the complainants. In the absence of compelling reasons of the public interest for pursuing a swift completion of this investigation, the lack of opposition by any party to the motion provides additional grounds for its being granted.

For these reasons, the Commission concludes that this investigation should be designated more complicated. The practical effect of this determination is that the deadline for making a final determination in this investigation will be extended from June 12, 1982, to December 12, 1982.

Copies of the Commission's Action and Order and all other non-confidential

documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Michael P. Mabile, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1628.

Issued: December 8, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-35959 Filed 12-15-81; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-99]

Certain Molded-In Sandwich Panel Inserts and Methods for Their Installation; Hearing on Presiding Officer's Recommendation and on Relief, Bonding, and Public Interest and Schedule for Filing Written Submissions

AGENCY: International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337-TA-99, Certain Molded-In Sandwich Panel Inserts and Methods for Their Installation.

Notice is hereby given that the presiding officer has issued a recommended determination that there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the unauthorized importation into the United States and sale of certain molded-in sandwich panel inserts that are the subject of the Commission's investigation. Accordingly the recommended determination and the record of the hearing have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents on the record of the investigation) by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202-523-0161.

Commission Hearing

The Commission will hold a public hearing on January 20, 1982, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on

the presiding officer's recommended determination that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties.

Oral Arguments

Any party to the Commission's investigation or any interested Government agency may present an oral argument concerning the presiding officer's recommended determination. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons making oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the presiding officer.

Oral Presentations on Relief, Bonding, and the Public Interest

Following the oral arguments on the presiding officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in the same order as oral arguments on the recommended determination.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject article from entry into the United States and/or (2) an order which could result in one or more respondents being required

to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

Time Limit For Oral Argument and Oral Presentation

Parties and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interest. Persons making only oral presentations on remedy, bonding and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt to a timely request to do so.

Written Submissions

In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed

exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on December 31, 1981; written submissions on the questions of remedy, bonding, and public interest must be filed not later than the close of business on January 7, 1982. During the course of the hearing, the parties may be asked to file posthearing briefs.

Notice of Appearance

Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by January 13, 1982.

Additional Information

The original and 11 true copies of all briefs on violation must be filed with the Office of the Secretary not later than December 31, 1981; the original copy and 11 true copies of all briefs on remedy, bonding, and public interest must be filed with the Office of the Secretary not later than January 7, 1982. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request in camera treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents of arguments containing confidential information approved by the Commission for in camera treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of April 29, 1981, 45 FR 24035.

FOR FURTHER INFORMATION CONTACT:

Clarease E. Mitchell, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

Issued: December 7, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-35960 Filed 12-15-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-98]

Certain Screw Jacks and Components Thereof Including Gold-Worked Pinion Gears; Termination of Investigation on Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of the investigation on the basis of a settlement agreement.

SUPPLEMENTARY INFORMATION:

Complainant Auto Specialties Manufacturing Co., respondents Seeburn Metal Products Ltd. and General Motors Corporation, and the Commission investigative attorney moved in a joint motion for termination of this investigation based on a settlement agreement. On September 29, 1981, the presiding officer recommended that the joint motion be granted.

On October 21, 1981, a nonconfidential version of the settlement agreement was published in the Federal Register (46 FR 51676). At the end of the 30-day comment period no comments adverse to the agreement had been received.

On December 4, 1981, the Commission terminated this investigation on the basis of the settlement agreement.

Notice of the institution of the investigation was published in the Federal Register of February 11, 1981 (46 FR 11924).

Copies of the Commission's Action and Order and all nonconfidential documents in the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT:

Jeffrey S. Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0359.

Issued: December 7, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-35963 Filed 12-15-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-97]**Certain Steel Rod Treating Apparatus and Components Thereof; Denial of Motion For Leave to Submit Supplemental Post-Hearing Brief**

AGENCY: International Trade Commission.

ACTION: Denial of motion for leave to submit a supplemental post-hearing brief

supplementary information: Pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Commission is currently conducting an investigation of alleged unfair acts and alleged practice of unfair methods of competition in connection with the importation or sale of certain steel rod treating apparatus and components thereof.

Notice of the institution of this investigation was published in the *Federal Register* of January 28, 1981 (46 FR 9263).

On November 18, 1981, respondents Ashlow Ltd., Korf Industries, Inc., Ashlow Corp., and Georgetown Steel Corp. moved (Motion No. 97-62c) for leave to submit a supplemental brief based on allegedly newly discovered evidence.

The Commission has denied the motion.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 523-0375.

Issued: December 9, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-35958 Filed 12-15-81; 8:45 am]
BILLING CODE 7020-02-M

[Investigation 337-TA-97]**Certain Steel Rod Treating Apparatus and Components Thereof; Issuance of Exclusion Order**

AGENCY: International Trade Commission.

ACTION: Issuance of exclusion order.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain steel rod treating apparatus and components thereof. Notice of the institution of the investigation was published in the *Federal Register* of January 28, 1981 (46 FR 9262).

On December 1, 1981, the Commission unanimously determined that there is a violation of section 337 in the unauthorized importation or sale of certain steel rod treating apparatus and components thereof which infringe U.S. Letters Patent 3,390,871. The Commission further determined that the appropriate remedy is an exclusion order pursuant to section 337(d) excluding from entry into the United States certain steel rod treating apparatus which are manufactured by or on behalf of Korf Industrie und Handel, GmbH, Korf Engineering, GmbH, Korf Industries, Inc., Ashlow Ltd., Ashlow Corp., Mr. Willy Korf, and/or Mr. Johann Heinrich Rohde, or any successor, assignee, parent company, affiliated person, subsidiary, or related business entity of the above-named parties respondent, or which are sought to be imported by Georgetown Steel Corporation.

Copies of the Commission's Action and Order, the Commission's opinion, and all other public documents on the record of the investigation are available for inspection by the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0375.

Issued: December 10, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-35961 Filed 12-15-81; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 701-TA-80 (Final)]**Lamb Meat From New Zealand; Institution of Final Countervailing Duty Investigation**

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

EFFECTIVE DATE: December 4, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen P. Miller, Office of Investigations (202-523-0305).

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1981, a petition was filed with the Department of Commerce by counsel for the National Wool Growers Association, Inc., Salt Lake City, Utah,

alleging that imports of lamb meat from New Zealand are being subsidized within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303). The National Lamb Feeders Association, Inc., Menard, Texas, became a copetitioner on May 12, 1981. As New Zealand was not at that time a "country under the Agreement" within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), there was no requirement that the Commission conduct a preliminary material injury investigation pursuant to section 703(a).

On September 17, 1981, however, the United States Trade Representative announced that New Zealand had become a "country under the Agreement" (46 FR 46263). Accordingly, Commerce terminated its investigation under section 303, initiated an investigation under section 702, and notified the Commission of its action.

On November 18, 1981 (46 FR 56676) the Commission determined by a 4-2 vote, on the basis of the information developed during the course of investigation No. 701-TA-80 (Preliminary), that there is reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from New Zealand of lamb meat, provided for in item 106.30 of the Tariff Schedules of the United States (TSUS), which allegedly are being subsidized by the government of New Zealand.

On November 24, 1981, the Department of Commerce made a preliminary determination under section 703(b) of the Tariff Act of 1930 that there is a reasonable basis to believe or suspect that the Government of New Zealand grants to manufacturers, producers, or exporters of lamb meat benefits which constitute a subsidy within the meaning of the countervailing duty law. Commerce estimates these subsidies to be 6.19 percent of the f.o.b. value of lamb meat exports to the United States. Accordingly effective November 30, 1981, the Commission instituted Investigation No. 701-TA-80 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports of such merchandise. This investigation will be conducted according to provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 44 FR 76457). The final determination by the Department of Commerce of whether subsidies are being provided by the Government of New Zealand will be

made not later than February 4, 1982, unless the investigation is extended.

Staff Report

A staff report containing preliminary findings of fact will be available to all parties on January 19, 1982.

Written Submissions

Any person may submit to the Commission on or before February 18, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and nineteen copies of such a statement must be filed at the office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Public Hearing

The Commission will hold a public hearing in connection with this investigation on February 11, 1982, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.) February 5, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10:00 a.m., e.s.t., January 21, 1982, in Room 117 at the U.S. International Trade Commission Building. Prehearing statements must be filed on or before February 5, 1982. For further information concerning the conduct of the investigation, hearing procedures, and rules of general applications, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

(Section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20, 44 FR 76458))

Issued: December 7, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-35962 Filed 12-15-81; 8:45 am]

BILLING CODE 7020-02-M

[731-TA-44 (Final)]

Sorbitol From France; Institution of Final Antidumping Investigation and Scheduling of Hearing

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping duty investigation.

SUMMARY: On November 30, 1981, the United States Department of Commerce issued a preliminary determination that there is reason to believe or suspect that sorbitol from France is being sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673b). Accordingly, the United States International Trade Commission (hereinafter "the Commission") hereby gives notice of the institution of investigation No. 731-TA-44 (Final) to determine whether an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise provided for in item 493.68 of the Tariff Schedules of the United States (TSUS). This investigation will be conducted according to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207), Subpart C, effective January 1, 1981.

EFFECTIVE DATE: November 30, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Timberlake, Office of Investigations, U.S. International Trade Commission, Room 349, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523-0368.

SUPPLEMENTARY INFORMATION: On July 23, 1981, the Commission determined on the basis of the information developed during the course of investigation No. 731-TA-44 (Preliminary), that there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury by reason of imports of sorbitol from France, provided for in TSUS item 493.68 which is allegedly sold or likely to be sold at less than fair value. As a result of the Commission's determination, the Department of Commerce continued its investigation into the question of less-than-fair-value sales. The final determination by the Department of Commerce of whether sorbitol from

France is being, or is likely to be, sold in the United States at less than fair value will be made within 75 days after the date of its preliminary determination, or, in this case, by February 5, 1982.

Written submissions

Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and nineteen (19) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, on or before February 17, 1982. All written submissions, except for confidential business data, will be available for public inspection.

Any submission of business information for which confidential treatment is desired shall be submitted separately from other documents. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information". Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

A staff report containing preliminary findings of fact will be available to all interested parties on February 2, 1982.

Public hearing

The Commission will hold a public hearing in connection with this investigation on February 24, 1982, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.), February 1, 1982. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 10:00 a.m., e.s.t., on February 3, 1982, in Room 117 of the U.S. International Trade Commission Building and must file prehearing statements on or before February 17, 1982. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure Part 207, Subpart C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR 201).

The Commission has waived Commission rules § 201.12(d), "submission of prepared statements," in connection with this investigation. This

rule states that "Copies of witnesses' prepared statements should be filed with the Office of the Secretary of the Commission not later than 3 business days prior to the hearing and submission of such statements shall comply with §§ 201.6 and 201.8 of this subpart". It is nevertheless the Commission's request that parties submit copies of witnesses' prepared testimony as early as practicable before the hearing in order to permit Commission review.

(Section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20))

Issued: December 10, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-35950 Filed 12-15-81; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 19, 1981, Endo Laboratories, Inc., 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II.
Hydrocodone (9193)	II.
Oxymorphone (9652)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than January 11, 1982.

Dated: December 9, 1981.

Francis M. Mullen, Jr.,
Acting Administrator, Drug Enforcement Administration.

[FR Doc. 81-35967 Filed 12-15-81; 8:45 am]

BILLING CODE 4410-09-M

National Institute of Corrections

Grant and Contract Review Process; Procedures

Notice is hereby given that the National Institute of Corrections (NIC) has amended its procedures—which were published in the *Federal Register* Vol. 41, No. 216—Monday, November 8, 1976 at pp. 49200-49201, amended in the *Federal Register*, Vol. 43, No. 251—Friday, December 29, 1978 at pp. 61033-61035 and amended in the *Federal Register*, Vol. 46, No. 41—Tuesday, March 3, 1981 at pp. 15001-15002—for the internal processing of concept papers, grant applications and/or contracts. These procedures cover concept papers, grant applications and/or contracts submitted by appropriate individuals, organizations or agencies with NIC's enabling legislation, (18 U.S.C. 4351-4353 (1974)) as amended follow.

Allen F. Breed,

Director, National Institute of Corrections.

National Institute of Corrections

Grant and Contract Review Process

1. *Purpose:* To formalize the responsibilities of the Advisory Board, Executive Committee of the Advisory Board, Standing Committees of the Advisory Board, and the Director of the National Institute of Corrections with regard to grant and contract review and award. To detail the steps involved in the review and award process.

2. *Directives Affected:* Supersedes procedures contained in June 23-24, 1975, National Institute of Corrections Advisory Board Minutes. Supplements all official Government regulations.

3. Definition of Terms:

A. For purposes of this statement, the term "Director" means the Director of the National Institute of Corrections; the term "Advisory Board" means the Advisory Board of the National Institute of Corrections; and the term "Executive Committee" means the Executive Committee (Chairman and three (3) vice-chairmen) of the Advisory Board, and the Standing Committees refer to the program areas of the Institute: (1) Prisons, (2) Jails, (3) Community Corrections.

B. An "application" is a duly executed Standard Form 424—Federal Assistance, properly completed in

compliance with application instructions and submitted from eligible parties in accordance with Federal Management Circular FMC 74-7 and FMC 73-7.

C. A "concept paper" is any submission of materials other than the Standard Form 424 which outlines in brief the submitter's programmatic and budgetary proposal.

(Concept papers and applications for grants originate from three primary sources: (1) in response to announced initiative efforts; (2) solicited by National Institute of Corrections staff; and (3) forwarded to the National Institute of Corrections unsolicited.)

D. "Employee" means an officer or employee of the Department of Justice and includes a special Government employee (as defined in paragraph E of this section).

E. "Special Government Employee" means an individual who is retained, designated, appointed, or employed by the Department of Justice to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. For purposes of this policy statement, members of the National Institute of Corrections Advisory Board shall be considered "Special Government Employees."

F. "Conflict of Interest"—The Department of Justice Standards of Conduct, 28 CFR Part 45.735-4, defining "Conflicts of Interest," apply to "employees" and "special government employees" as defined in this section.

(1) A conflict of interest exists whenever the performance of the duties of an employee has or appears to have a direct and predictable effect upon a financial interest of such employee or of his spouse, minor child, partner, or person or organization with which he is associated or is negotiating for future employment.

(2) A conflict of interest exists even though there is no reason to suppose that the employee will, in fact, perform the duties to his/her own personal advantage rather than to the advantage of the Government.

(3) An employee shall not have a direct or indirect financial interest that conflicts, or appears to conflict, with his Government duties and responsibilities.

(4) This section does not preclude an employee from having a financial interest or engaging in a financial transaction to the same extent as private citizen not employed by the Government so long as it is not prohibited by statute.

(a) No employee shall have or make investments (a) in enterprises which it is

reasonable to believe will be involved in decisions to be made by him, (b) on the basis of information which comes to him by reason of his status as a Department of Justice employee and which has not become part of the body of public information, or (c) which are reasonably likely to create any conflict in the proper discharge of his official duties.

G. The term "Contract" means establishment of a binding legal relationship obligating the seller to furnish personal property or nonpersonal services (i.e., unsupervised delivery of services or a product) and the buyer to pay therefore. It includes all types of commitments which obligate the Government to an expenditure of funds. In addition to a two-signature document, it includes all transactions resulting from acceptance of offers by awards or notices of awards; agreements and job orders or task letters issued thereunder; letter contracts; letters of intent; and order, such as purchase orders, under which the contract becomes effective by written acceptance or performance. It also includes contract modifications.

H. "Field readers" are those individuals who review NIC-selected concept papers and application statements from their professional perspectives for the purpose of assessing the relative merits and feasibility of proposed actions or activities of the submitter. These individuals appear on the Advisory Board's approved list of readers.

I. The term "Grant" means an agreement between the Federal Government and another party whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities.

4. Annual Program Plan:

Each year the Director of the National Institute of Corrections shall prepare for the approval of the Advisory Board an Annual Program Plan. This Plan shall outline the program priorities or thrust areas of the Institute, the types of grants and contracts to be undertaken in the next fiscal year, and their estimated funding levels. The Annual Program Plan, once approved, may be modified at any duly authorized meeting of the Advisory Board.

The Annual Program Plan shall serve as the framework and guidelines by which grants or applications will be reviewed.

5. Action:

A. If any NIC Advisory Board member or staff member (for one year after their separation from the Institute) shall have a substantial personal involvement (review of draft, personal financial gain from the project if approved, etc.) in the

preparation and/or submission of a proposal to NIC, then he or she shall declare the nature of that involvement to the Director and shall not participate in the review of the proposal in any manner.

B. Each concept paper and application will receive a fiscal and programmatic review by the National Institute of Corrections staff. When submissions are deemed nonfundable by staff, a rejection letter briefly stating the reason for rejection will be forwarded to the organization or person submitting the concept paper or application.

C. Where the concept paper or application is deemed potentially fundable and there is no known conflict of interest, the following will apply:

(1) If the proposed project is (a) within the approved National Institute of Corrections thrust areas and the funding level is \$100,000 or less; or (b) for the performance of any internal administrative functions of the National Institute of Corrections; or (c) an interagency agreement where another federal agency is the recipient, the Director will review staff recommendations and make the award decision.

(2) If the proposed project is within the approved National Institute of Corrections thrust areas but requested funding is greater than \$100,000, the Director will obtain at least three field reviews from the Board-approved list of field readers, as to the concept paper or application's suitability, feasibility, and contribution to the field of corrections.

The Director will then review staff recommendations and field reviews and make an award decision.

(3) If the proposed project is within the approved National Institute of Corrections thrust areas but requested funding is \$300,000 or more, the process will proceed as in C(2) above with the exception that the Director will seek the advice of the appropriate standing committee (Prisons, Jails and Community Corrections) as to the appropriateness of the project to the Annual Program Plan.

D. Where the application is deemed potentially fundable but the declaration referred to in 5(a) above or other data indicates in the judgement of the Director or his designee that there may be a substantial personal conflict of interest, the procedures outlined in Section C above will apply, but in addition:

(1) There will be fiscal and programmatic review by staff and review by three field readers from the Board-approved list of reviewers, as to the application's suitability, feasibility,

and contribution to the field or corrections.

(2) Where such reviews are positive, the Director will then seek the advice of the standing committee responsible for the program area regarding the appropriateness of an award and then make an award decision.

E. Each organization or person submitting an application will have the right to appeal nonfavorable decisions:

(1) Where applications meet guidelines presented in C(1) or C(2) or C(3) above, the Executive Committee will serve as the appellate review board and make recommendations to the Director for appropriate action.

(2) The Executive Committee sitting as an appellate review board will not include members of the standing committee that reviewed the application.

F. *Continuation grants.* Any grant for which a renewal or continuation is requested will be reviewed by NIC program staff. This review will include consideration of any evaluations and reports completed during the term of the grant, NIC's Annual Program Plan, as well as the need for a continued effort in the particular area covered by that particular grant. The reviewing staff will submit a recommendation to the Director. The Director will then make a decision on the continuation of the grant in question.

Appeals to decisions on continuation grants may be made in accordance with the specifications outlined by Section E above.

6. Reporting:

The appropriate Standing Committees and Board members on request, will receive a listing of NIC grant awards quarterly. In addition, the appropriate Standing Committees will be advised quarterly of programmatic contracts entered into by NIC.

(PR Doc. 81-35942 Filed 12-15-81; 8:45 am)

BILLING CODE 4410-05-M

Advisory Board of the National Institute of Corrections; Bylaws

Notice is hereby given that the National Institute of Corrections (NIC) has amended the Bylaws which govern its affairs and operations as authorized under 18 U.S.C. 4351-4353 (1974). The Bylaws (which were published in the Federal Register Vol. 41, No. 174—Tuesday, September 7, 1976 at pp. 37612-37614 and amended in the Federal Register Vol. 43, No. 251—Friday,

December 29, 1978 at pp. 61032-61033) as amended follow.

Allen F. Breed,

Director, National Institute of Corrections.

National Institute of Corrections— Bylaws

Article I—Title and objects

The name of this organization shall be the Advisory Board of the National Institute of Corrections (NIC) hereinafter referred to as the Board of NIC or the Board.

Under the authority of 18 U.S.C. 4351-4353 (1974) as provided for by Pub. L. 93-415, Title V, Part B hereinafter referred to as 18 U.S.C. Sections 4351-4353 (1974), NIC's overall goal is to aid in the development of more effective and humane federal, state and local correctional systems which will contribute to the safety of offenders, staff and the community by:

1. Providing the stimulus for cooperative and consolidated action by all groups impacting on corrections.
2. Establishing close working relationships with national, state and local correctional agencies.
3. Developing at all levels in corrections, a larger sense of professionalism.

4. Drawing other professional groups into a closer relationship with correctional planning and practice.

In order to implement these objectives, 18 U.S.C. 4351-4353 (1974) outlines five primary assistance areas that form the core of NIC's activities: training, research and evaluation, policy formulation and implementation, clearinghouse and publication, and technical assistance.

18 U.S.C. 4351-4353 (1974) expressly charges the Board of NIC with both the authority and responsibility to develop and supervise the overall policy of NIC. The primary responsibility of the Board in this regard shall be to review and approve the Annual Program Plan presented by the Director of NIC.

Article II—Organization

Section 1. *Membership and terms of office*—as required under 18 U.S.C. 4351-4353 (1974), the Board of NIC shall consist of sixteen members:

Six individuals or their respective designees shall serve as ex officio members, these include: The Director of the Federal Bureau of Prisons, the Administrator of the Law Enforcement Assistance Administration, Chairman of the U.S. Parole Commission, the Director of the Federal Judicial Center, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Assistant Secretary for Development

of the Department of Health and Human Services. Any ex officio member of the Board who selects a designee to serve in his position shall notify the Board's chairman in writing of such action. This written notification must include the name and position of the designee. Any change in a respective designee must follow the same notification procedure.

Five members of the Board of NIC must qualify as practitioners at the federal, state or local level in the area of corrections. These individuals shall be appointed by the Attorney General for staggered three year terms.

The five remaining members of the Board of NIC shall be selected from the private sector such as business, labor and education and shall have demonstrated an active interest in corrections. These five members shall be appointed by the Attorney General for staggered three year terms.

Upon completion of the term of each of the ten members not serving ex officio, the Attorney General shall appoint successors who will each serve for a term of three years. Terms of appointment of each of the ten members not serving ex officio shall bear the effective date of January 1.

Section 2. *General Duties.* The Committee as a whole shall:

- A. Review all proposed amendments to these bylaws,
- B. Review all legislation impacting upon NIC,
- C. Participate with the Director of NIC in the development of a long-range fiscal plan for Prisons, Jails, and Community Corrections,
- D. Participate with the Director of NIC in the development of annual program plans for NIC,
- E. Review all documents and guidelines dealing with grant and contract funding for NIC.

Section 3. *Officers of the Board*—The Board annually shall elect a chairman and three vice-chairmen. These officers shall be elected by a simple majority vote of the Board. The term of the office for the chairman and vice-chairman shall be one year commencing upon completion of the Board's fall/winter meeting. No chairman or vice-chairman shall serve more than two consecutive one year terms.

No ex officio member of the Board may serve as chairman of the Board. No designee may serve as an officer of the Board.

The Chairman shall:

1. Preside over all meetings of the Board.
2. Consult with Board members and the Director of NIC and develop an agenda for each meeting. The agenda shall include but not be limited to: a

report from each standing and when appropriate from each ad hoc committee or task force, a report from the Director of NIC, and any proposed amendment to these bylaws.

3. Appoint as many ad hoc committees or task forces as are necessary to assist NIC in the accomplishment of its objectives.

4. Appoint each vice-chairman elected by the Board to chair one of three specific standing committees established under these bylaws and appoint members of those committees.

5. Perform such other functions and duties as the Board may authorize or request within the parameters of NIC's legislation (18 U.S.C. 4351-4353 (1974)).

The Chairman of the Board is a member of all committees and task forces of the Board and shall be entitled to vote on any committee or task force of the Board. The Chairman of the Board shall be counted in the quorum of any committee or task force.

In event of his absence the chairman shall designate in writing one of the three standing committee vice-chairmen who will serve in his place. In event of the long term incapacitation or demise of the chairman the following rule of succession shall be applied. If eligible, succession shall occur in descending order:

1. Chairman, Prisons Committee
2. Chairman, Jail Committee
3. Chairman, Community Corrections Committee

B. Each vice-chairman shall:

1. Serve as a chairman of one of the three standing committees established under these bylaws. In the event of his absence the chairman of any standing committee of the Board must designate a replacement for the interim.

Section 4. *Committee Structure*

A. *The Executive Committee* shall consist of the chairman of the Advisory Board and the three (3) chairmen for each of the three standing committees and shall serve as an appellate review board making recommendations to the Director of NIC in cases in appeal by applicants for grants and contracts:

The Executive Committee shall have the authority to:

1. Take appropriate action for the Board as a whole when not in session.
2. Act as an appellate review Board for hearing the appeals from actions of the three standing committees.

B. *Standing Committees*—there shall be three standing Committees as follows: (1) Prisons, (2) Jails, (3) Community Corrections. Each of the standing committees will be composed of no more than five and not less than three members of the Board. Each

standing committee shall be balanced as equally as possible with members from each of the three categories of Board members, i.e., ex officio, practitioners and private sector representatives. At no time shall more than two members from any one category serve on any one standing committee. No individual Board member shall serve on more than two standing committees at any one time. No designee may serve as chairman of a standing committee.

Each of the three standing committees through its chairman, shall make its recommendations known to the Board at its regular meetings.

Standing committee responsibilities include:

1. Reviewing concept papers and proposals appropriate to their committees' specialty area (Prisons, Jails, Community Corrections) that are in excess of \$300,000 and making recommendations to the Director regarding funding.
2. Working with assigned staff in developing annual program plan particularly as it relates to a standing committee subject area like prisons, jails, and community corrections.
3. Reviewing the fiscal allocations within the preceding year's Annual Program Plan and making recommendations regarding funding adequacy and future funding for the Division with whom the committee works.
4. Helping to develop policy for the Division with whom they work.
5. Review, on a quarterly basis, grant award summaries covering grants made in their respective subject areas (Prisons, Jails, and Community Corrections).

C. Ad Hoc Committees and Task Forces—the chairman is empowered to appoint as many ad hoc committees and task forces from the Board's membership as deemed appropriate to conduct the business of the Board. As with standing committees, representation on ad hoc committees should reflect, if possible, all three categories of Board membership as outlined in Article II, Section I of these bylaws.

Upon the recommendation of the Director, or the Chairman of the *ad hoc* committee or task force, or upon the recommendation of the Board, the Chairman is empowered to appoint, because of their expertise, non-members of the Board to special subcommittees of *ad hoc* committees or task forces.

There shall be a nominating committee which will be appointed annually by the chairman. The committee shall nominate a slate of candidates to replace each elected

officer. Upon submission to the Board of its recommendations the committee shall be discharged.

Article III—Director of NIC

As provided for by 18 U.S.C. 4351 (h)(1974), the Director of NIC shall be appointed by the Attorney General after consultation with the Board of NIC.

Under 18 U.S.C. 4351 (h)(1974), the Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of NIC and may employ such staff, faculty and administrative personnel, subject to the Civil Service and classification laws, as are necessary to the functioning of NIC. The Director shall have the power to acquire and hold real and personal property for NIC and may receive gifts, donations, and trusts on its behalf. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board.

In accordance with the policies of the Board of NIC and applicable law, the Board of NIC delegates to the Director the authority to issue procedures, regulations, and guidelines to implement these policies.

It shall be the primary duty of the Director of NIC to present NIC's Annual Program Plan to the Board, and to execute the Annual Program Plan upon Board approval.

The Director of NIC shall also have the following duties as applicable to the Advisory Board: (1) To provide appropriate staff support to the Board and its committees as may be necessary for the fulfillment of their duties, (2) to present a report to the Board of NIC at each meeting of the activities of NIC to date, (3) to maintain an up-to-date file of any written authorization which ex officio members of the Board of NIC must file when designating an individual to serve in their place as provided for under 18 U.S.C. 4351-4353 (1974), (4) to provide for the keeping and recording of the minutes of any meeting of the Board of NIC and upon request for any of the Board's committees, (5) to provide all Board members with notice of the upcoming meetings, the agenda for the meeting, the minutes of the last meeting and any other appropriate materials, (6) to provide the Board through such means as it may direct a quarterly report of grant and contract awards.

Article IV—Standard Operating Procedure

The Director of NIC shall promulgate Standard Operating Procedures for the management and control of Institute business and activities. Where such

procedures have direct impact on Advisory Board responsibilities they will be submitted to the Board for review before becoming operational. Any Standard Operating Procedure falling into this category will be attached to and become a part of these bylaws after being published in the Federal Register.

Article V—Meetings

The Board shall meet three times annually. However, when deemed necessary, extra meetings may be called by the chairman or by at least two thirds of the Board.

Written notice of each meeting of the Board of NIC stating the place, date and hour of the meeting, shall be given to each member at least three weeks prior to the date of the meeting.

Notice of any special or extra meeting of the Board of NIC called by the chairman or two-thirds of the Board shall indicate that it is being issued by or at the direction of the persons calling the meeting and shall state the purpose or purposes for which the meeting is being called. Special or extra meetings may be called at any time with consent of two-thirds of the Board. Notice of a special or extra meeting may be given by telephone and/or by mail and ratified by two-thirds of the Board at the special or extra meeting.

Notice of all meetings of the Board shall be given to the public. Such notice shall be published in the Federal Register at least 15 days prior to the meeting, provided that in emergencies, such requirements may be waived. This notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the time, place, and location of such meeting.

Except for executive sessions, meetings of the Board shall be open to the public for observation. The chairman may invite more active participation from the public when such action is appropriate and does not interfere with the orderly transaction of the Board's business.

Executive sessions may be called by a majority vote of a quorum of the Board in public. No final action shall be taken at such meetings except upon votes in open session. These sessions shall not be used to obstruct the fullest possible public accessibility to meetings.

Article VI—Voting

All members of the Board of NIC shall each be entitled to a vote on any issue before the Board. Proxy voting will be allowed at any meeting of the Board of NIC or at any meeting of its committees or task forces. The proxy must be

written and filed with the chairman prior to the voting on the issue in question. Proxies may not be used to form a quorum.

In the event there is a need for the Board to vote on any issue between regularly scheduled meetings, the Chairman, with the consent of the Executive Committee, may conduct a mail ballot. Advisory Board members will be given a minimum of fifteen days within which to respond to a mail ballot.

Under 18 U.S.C. 4351, a member serving *ex officio* may designate an individual to serve and vote in his position at any meeting of the Board or its committees and task forces. Selection of a designee does not preclude an *ex officio* member from attending and voting at any meeting of the Board, its committees or task forces in place of his respective designee.

No action of the Board of NIC shall be valid and binding without a vote by a quorum of its members. A quorum of the Board shall consist of one-half or more of its members or designees.

Article VII—Compensation of Board Members

Under 18 U.S.C. 4351-4353 (1974), the members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Board who are full-time officers or employees of the United States shall serve without additional compensation, but may be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to 18 U.S.C. 4351-4353 (1974), be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5, United States Code, including travel-time, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code for persons in the Government service employed intermittently. Compensation and reimbursement as provided for by this Article shall be made only upon written request.

Article VIII—Parliamentary Authority

Meetings of the Board and its committees shall be conducted in accordance with the rules contained in "Robert's Rules of Order Revised." These rules shall govern the Board in all

cases where applicable and in which they are not inconsistent with these bylaws. Special rules of order preempting those contained in "Robert's Rules of Order Revised" may be adopted by the Board. Any special rules of order are to be incorporated in these bylaws as a separate section under this Article.

Article IX—Amendment of the Bylaws

These bylaws may be amended at any meeting of the Board by a majority vote of a quorum of the Board. Amendments to the bylaws may be proposed by the Executive Committee or by any five members of the Board of NIC. Any proposed amendments must be written, signed and sent to Board members at least 15 days in advance of the meeting at which they will be discussed.

Article X—Notice of the Bylaws

Notice of these bylaws shall be published in the Federal Register.

[FR Doc. 81-35945 Filed 12-15-81; 8:45 am]

BILLING CODE 4410-05-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-247 SP; 50-286 SP]

Consolidated Edison Company of New York, Inc., (Indian Point, Unit No. 2) and Power Authority of the State of New York, Inc., (Indian Point, Unit No. 3); Scheduling Hearings for Limited Appearances

December 10, 1981.

Notice is hereby given that hearings for limited appearances pursuant to 10 CFR 2.715a(a) will be conducted in Westchester County, New York, and Rockland County, New York, during the period January 14-16, 1982. The purpose of these hearings is to provide an opportunity for persons who are not parties to this proceeding to express their views before this Board with respect to the issues in this case. The schedule for the hearings is:

Thursday, January 14, 1982, 2:00 p.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m. at Civic Center, Westbrook Drive, Town of Cortlandt, Peekskill, New York;
Friday, January 15, 1982, 2:00 p.m. to 5:00 p.m. and Saturday, January 16, 1982, 9:00 a.m. to 12:00 M. at Clarkstown Town Hall, Main Auditorium, 10 Maple Avenue, New City, New York.

Each person who wishes to speak will be allowed up to five minutes for his or her presentation. A person who has already made an oral statement at one of the sessions may not make a second statement at one of the other sessions. The Board will also accept written statements, of any length, at the

hearings; written statements can also be mailed to the Board at any time during the proceeding, in care of the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Additional opportunities for oral limited appearances will be provided later in this proceeding.

All parties to this proceeding are directed to attend the limited appearance hearings. The Board may request the NRC Staff and/or the Licensees to address, either during the hearing or at some later time, any of the matters raised in the limited appearance statements. In addition, any of the parties to the proceeding may address any matter raised in the limited appearance statements, either at the hearing or at a later time as may be deemed appropriate by the Board.

It is this 10th day of December, 1981,

Ordered

That hearings for limited appearances will be held in Westchester and Rockland Counties, New York, as set forth above. All parties to this proceeding shall attend said hearings; the NRC Staff and Licensees shall be prepared to respond to the limited appearance statements as the Board may request, and any party may respond to the statements as the Board may allow.

Atomic Safety and Licensing Board.

Louis J. Carter,
Chairman, Administrative Judge.

Oscar H. Paris,
Administrative Judge.

Frederick J. Shon,
Administrative Judge.

[FR Doc. 81-35936 Filed 12-15-81; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Doc. No. 301-26]

California Cling Peach Advisory Board, et al.; Initiation of Investigation and Announcement of Hearing

On October 23, 1981, the Chairman of the Section 301 Committee received a petition from the California Cling Peach Advisory Board and other trade organizations alleging *inter alia* that EC production subsidies on canned peaches, canned pears and raisins are granted in a manner inconsistent with the General Agreement on Tariffs and Trade and constitute an unreasonable and unjustifiable burden on U.S. commerce. The petition was filed pursuant to Section 301 of the Trade Act

of 1974, as amended (19 U.S.C. 2411 *et seq.*). On December 10, the United States Trade Representative decided to initiate an investigation pursuant to 19 U.S.C. 2412(a).

Pursuant to 19 U.S.C. 2412(b), a hearing has been scheduled for January 6, 1982 at 9:30 a.m. to allow interested parties to submit their views on the issues raised by the petition. Requests to testify orally should be received no later than December 29, 1981 and shall conform to the requirements of § 2006.9 of Title 15 of the Code of Federal Regulations. The brief accompanying such oral testimony should be submitted no later than December 31, 1982 and should conform to the requirements of 15 CFR 2006.8(b).

Those interested parties who do not wish to testify orally but who do wish to submit written briefs must do so no later than January 6, 1982. Those briefs must meet the requirements of 15 CFR 2006.8(b).

Rebuttal briefs must conform to the requirements of 15 CFR 2006.8(c) and must be submitted no later than January 20, 1982.

All requests and written briefs should be sent to the attention of the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 222, 600 17th Street, NW., Washington, D.C. 20506. The text of the petition is as follows:

Heron, Haggart, Ford, Burchette & Ruckert, Suite 705, 1101 17th Street NW., Washington, D.C. 20036

October 23, 1981.

Mrs. Jeanne Archibald,
Chairman, Section 301 Committee, Office of
the United States Trade Representative,
600 17th Street NW., Washington, D.C.

Dear Mrs. Archibald: The parties identified hereinafter petition the President by filing this petition with the United States Trade Representative and your Section 301 Committee and request the President to take all appropriate and feasible action within his power to obtain the elimination of the acts, policies and practices of the European Economic Community (EEC) described hereinafter. 19 U.S.C. 2411 and 2412; 15 CFR 2006.

The petitioners further request that, in light of the growing losses being sustained by the action of the European Economic Community, this petition be treated on an expedited and emergency basis. If necessary, this would include the President acting on his own motion as set forth at 19 U.S.C. 2411(c)(1).

The petitioners request too that the President, the United States Trade Representative and this Committee avail themselves of the material presently available and compiled for use by the United States in efforts to persuade the European Economic Community to discontinue its practices which are injuring petitioners' exports. This is particularly true with respect

to exports of raisins from the United States which have been totally disrupted as a result of the European Economic Community's acts, policies and practices begun this past summer.

This Committee is specifically directed to the interagency paper and supporting documents from individual agencies that were considered by the United States in reaching its decision to seek consultations with the European Economic Community in support of the complaint of the government of Australia which is set forth at GATT Document L/5187. The government of Australia requested Article XXIII:1 consultations with the European Economic Community which are scheduled for November 6, 1981. The European Economic Community has refused to honor the request of the United States to participate in these discussions. The President, the United States Trade Representative and this Committee are thus urged to request immediately Article XXIII:1 consultations with the European Economic Community on the products that are the subject of this petition.

This Committee's attention is further directed to the cable traffic of the Department of State and the office of the U.S. Trade Representative concerning earlier representations to the European Economic Community over the damage to United States canned peach, canned pear and raisin exports. The petitioners further request that consideration be given to the economic data available within the Department of State, the Department of Commerce and the Department of Agriculture concerning U.S. exports of the petitioner's commodities. Each of these agencies have representatives on this Committee so that access to this material is readily available. Much of this material has already been considered in connection with previous decisions made on the issues raised by the petitioners.

It is believed that all of the documents outlined herein provide the President, the U.S. Trade Representative, and this Committee with the information necessary for the United States to proceed directly under Article XXIII:1. This action will assure both the European Economic Community and U.S. producers of peaches, pears and raisins of the seriousness of the effort undertaken by the United States to protect their export interests.

The need to proceed on an expedited basis is further emphasized by the recent public statements of Ambassador Brock and Secretary Block concerning agricultural trade between the United States and the European Economic Community. They have noted that the European Economic Community appears to be moving from the Common Agricultural Policy to the Common Export Policy, a movement which has major ramifications for all agricultural trade. The enlargement of the European Economic Community to include Greece and the pending accession of Spain and Portugal compound this trade disruption. If the present Administration intends for economic improvement to take place within the United States through a productive private sector, then foreign practices which damage U.S. exports must be removed.

The information to be included in this petition as set forth at 15 CFR 2006.1 is as follows:

(a) The petitioners and a brief description of their interest being adversely affected by the European Economic Community are as follows:

1. The California Cling Peach Advisory Board, P.O. Box 7111, San Francisco, CA 94120.

This petitioner is organized pursuant to California statute and represents all peach producers and marketers in the state of California. Its interest is in the export of canned peaches and fruit cocktail.

2. Sun Diamond Growers of California, P.O. Box 1721, Stockton, CA 95201.

This petitioner is a federated cooperative composed of Sun-Maid Growers of California, Sunsweet Growers, Inc. and California farmers of raisins, prunes and walnuts. Its interest is in the export of raisins.

3. Northwest Horticultural Council, P.O. Box 570, Yakima, WA 98907.

This petitioner represents, through its member associations, all growers and shippers of deciduous tree fruits in the states of Oregon and Washington. Its interest is in the export of canned peaches, canned pears and fruit cocktail.

4. California Canning Pear Association, 100 Bush Avenue, San Francisco, CA 94101.

This petitioner is a cooperative representing approximately 65% of the growers of canning pears in California. Its interest is in the export of canned pears and fruit cocktail.

5. California Canning Peach Association, P.O. Box 7001, Lafayette, CA 94549.

This petitioner is a cooperative bargaining association representing cling peach farmers who produce 60% of the cling peach tonnage in the state of California. Its interest is in the export of canned peaches and fruit cocktail.

6. Processing Pear Program Committee, P.O. Box 255383, Sacramento, CA 95865.

This petitioner is organized pursuant to California statute and represents all farmers producing pears for processing in the state of California. Its interest is in the export of canned pears and fruit cocktail.

7. California League of Food Processors, 1007 L Street, Sacramento, CA 95814.

This petitioner is a trade association whose membership produces canned peaches, canned pears and fruit cocktail. Its interest is in the export of canned peaches, canned pears and fruit cocktail.

8. California Raisin Advisory Board, P.O. Box 5335, Fresno, CA 93755.

This petitioner is organized pursuant to California statute and represents all farmers producing raisins in California. Its interest is in the export of raisins.

The export of all of the petitioners' products from the United States to the European Economic Community are being adversely damaged as a direct result of the European Economic Community's production subsidies for canned peaches, canned pears and raisins. This Committee's attention is also directed to exports of canned fruit cocktail, a product which has been

adversely affected because of the peaches and pears contained therein. This Committee, the U.S. Trade Representative and the President may wish to move on its own motion with respect to fruit cocktail to demonstrate its concern for agricultural exports. Fruit cocktail, in addition to canned peaches and pears, contains items such as cherries, grapes, pineapple, apricots and similar fruits.

(b) The act, policy and practice which is the subject of this petition is the European Economic Community's production subsidies for canned peaches, canned pears and raisins produced within the ten Member States. These acts, policies and practices fall directly within 19 U.S.C. 2411(a)(2) (A) and (B). Additionally, the acts, policies and practices violate Article XVI of the General Agreement on Tariffs and Trade. The President, the United States Trade Representative and this Committee may consider the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

(c) The EEC regulations which are the subject of this petition are contained in *The Official Journal of the European Communities*. The establishment of the production subsidies for canned peaches is contained in Council Regulation (EEC) No. 1152/78, issued May 30, 1978 (OJ No. L 144, 31.5.1978, p. 1). Bartlett pears were added for the 1979-1980 marketing year. The establishment of production subsidies for raisins is contained in Council Regulation (EEC) No. 2194/81, issued July 27, 1981 (OJ No. L 214, 1.8.1981, p. 1). Copies of these regulations are attached.

Council Regulation No. 1152/78 was the focus of bilateral discussions between the United States and the European Economic Community following publication of that regulation. These bilateral discussions were an effort to preclude the damage occurring to the United States as a result of the implementation of that regulation. This Committee is referred to the papers prepared for and the cable traffic reporting on those discussions.

(d) The European Economic Community and its ten Member States are the foreign governments whose acts, policies and practices are the subject of this petition.

(e) The products raised by this petition and subject to the acts, policies and practices of the European Economic Community are as follows:

1. Canned Peaches—TSUS Nos. 148.77 and 148.78—BTN 20.06B.
2. Canned Pears—TSUS No. 148.86—BTN 20.06B.

3. Raisins—TSUS Nos. 147.66, 147.68 and 147.70—BTN 08.04.

The United States may also wish to concern itself with fruit cocktail. Peaches and pears are the principal ingredients in fruit cocktail. Fruit cocktail also includes grapes, apricots, cherries, pineapple and similar ingredients.

(f) The acts, policies and practices of the European Economic Community in granting processing subsidies for canned peaches, canned pears and raisins is unjustifiable, unreasonable, discriminatory and burdens and restricts United States commerce in these products. These acts, policies and practices are causing serious prejudice to the interests of the United States by reducing exports of these commodities to the European Economic Community in direct violation of Article XVI of the General Agreement on Tariffs and Trade. As indicated earlier, the President, the United States Trade Representative and this Committee may consider the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade to be applicable.

Detailed information on the extent of the damage and the precise manner in which it occurs will be provided by witnesses who will appear at the hearing requested in this petition. This would be further documented by the information contained in petitioner's brief filed in connection with that hearing. A brief summary of the information outlining the case, much of which is already in the possession of this Committee and has been considered by the United States Trade Representative previously, will be set forth here.

The damaging subsidy system, which is the subject of this complaint, was initiated in 1978 through Commission Regulation No. 1152/78. Of the five products covered by that Regulation, the petitioners are concerned only with peaches. The Committee may wish to concern itself with dried prunes, tomato concentrate, peeled tomatoes and tomato juice. Subsequently, Bartlett pears were added to the system during the 1979-1980 marketing year. As soon as Greece became a member of the European Economic Community, dried grapes, otherwise referred to as raisins, were added to the EEC's scheme to subsidize these products in order to become self-sufficient.

The following table provides a brief history of the EEC's efforts to displace imports of canned peaches, canned pears and raisins by subsidizing its own inefficient and noncompetitive

production so as to reach self-sufficiency and then be able to export its products into the world market, displacing U.S. and other products. The EEC's program, progression and determination to disrupt trade in canned peaches, canned pears and raisins is following the identifiable pattern found with other agricultural commodities. The EEC's determination to disrupt trade is seen most clearly with raisins. There is a transition period in connection with canned peaches and canned pears tied to Greece's recent entry into the subsidy scheme. In the case of raisins, the subsidy became effective immediately and had the desired result, from the EEC's point of view, of disrupting U.S. trade in raisins.

HISTORY OF EEC SUBSIDY SCHEME FOR CANNED PEACHES, CANNED PEARS, AND DRIED GRAPES

	ECU's ¹ per metric ton			
	1978-79	1979-80	1980-81	1981-82
Peaches				
Min. Grower Price	286.30	301.30	315.80	334.75
Processor Subsidy	216.20	276.90	260.60	211.20
William (Bartlett) pears				
Min. Grower Price		261.30	294.80	324.28
Processor Subsidy		264.10	231.80	210.40
Subsidy Limits (MT)		(57,000)	(74,000)	(74,100)
Dried grapes (Sultanas, Quality No. 4) ²				
Min. Grower Price				1,171.80
Processor Subsidy				115.90
Storage Aid				3.20

¹ European Currency Units.

² Sultana No. 4 is the basis on which other prices (coefficients) for other grades of sultanas and currants are established.

³ Per week.

Since the subsidies on canned peaches, canned pears and raisins have been in place for only a short period of time, there is not a great deal of statistical information that is relevant. As this Committee knows, the subsidy on raisins began this summer. While the trade disruption was immediate, the statistics will not be available for some time, considering the lapse between the occurrence of imports and exports and the EEC's official reporting of those events. For that reason, this case becomes even more important, as it provides the opportunity to demonstrate to the agricultural community that the United States will be aggressive in defending its export interests before the damage becomes irreversible.

The subsidies being paid, as outlined in the history above, operate directly and indirectly to reduce imports of those products into the EEC causing serious prejudice to the legitimate export interests of the United States. This export subsidy also threatens U.S. exports in third country markets

because the resulting artificial stimulation increases the EEC's production of peaches, pears and raisins.

The magnitude of the EEC's minimum grower prices and processing subsidies for peaches and pears evidences the EEC's aggressive effort to stimulate production and its disregard of U.S. exports to the EEC.

	Peaches	Pears
EEC Minimum Grower Price (\$/MT).....	446.55	416.85
California Season Average Price ¹ (\$/MT).....	208.30	231.50
EEC Minimum vs. California Average (percent).....	214	180
EEC Processor Subsidy (\$/case ²).....	8.70	7.72
California f.o.b. Plant Quotations ³ (\$/case ²).....	13.80	16.15
EEC Subsidy vs. California f.o.b. (percent).....	63	48

¹ Equivalent processing plant door returns.
² Standard cases of 24/2 1/2's.
³ Private label list prices for choice halves, heavy syrup (September 1980).

The history of Greek support prices as Greece prepared for EEC membership provides similar evidence of aggressive practices without consideration to U.S. exports.

	Greek support prices for Sultana No. 4						
	1975	1976	1977	1978	1979	1980	1981
Drachmas/kilogram.....	22.00	25.00	27.50	35.00	48.00	68.00	79.94
Index.....	100.0	113.6	125.0	259.1	218.2	309.1	363.4
U.S. cents/pound.....	30.9	31.1	33.9	43.2	58.6	72.4	65.4
Index.....	100.0	100.6	109.7	139.8	190.3	234.3	211.7
General wholesale price index.....	100.0	114.0	129.6	143.0	173.1	222.2	⁴ 264.0
Drachmas/U.S. dollars (annual average).....	32.287	26.518	36.838	36.745	37.038	42.617	⁵ 55.48
Drachmas/U.S. dollars (3rd quarter).....	33.676	36.900	36.690	36.808	36.765	43.175	⁵ 59.636
U.S. cents/pound.....	29.6	30.7	34.0	43.1	59.2	71.4	60.8
U.S. dollars/short ton.....	592.00	614.00	680.00	862.00	1,184.00	1,428.00	1,216.00
Season average, price to U.S. producers (dollars/short ton).....	685.00	706.00	840.00	1,067.00	1,151.00	1,198.00	⁴ 1,275.00
Greek Sultana production (metric tons).....	87,000	⁶ 1,050	61,500	⁷ 1,742	78,700	68,500	⁸ 92,000
U.S. raisin production (short tons) (deliveries to handlers).....	263,595	141,924	248,942	99,433	303,147	313,645	⁴ 215,000

¹ First quarter.

² January-June.

³ July.

⁴ Field price.

⁵ Forecast.

The additional information requested by 15 CFR 2006.1(f) is as follows:

(1) Volume of trade in goods and services involved is as follows:

U.S. exports of canned peaches to the EEC-9 are as follows:

Year	Quantity (1,000 pounds)
1976/77	24,333
1977/78	58,228
1978/79	31,174
1979/80	30,100
1980/81	24,417

U.S. exports of canned pears to the EEC-9 are as follows:

Year	Quantity (1,000 pounds)
1976/77	699
1977/78	2,701
1978/79	1,189
1979/80	826
1980/81	399

U.S. exports of raisins to the EEC-9 are as follows:

Year	Quantity (metric tons)
1976	9,612
1977	12,231
1978	5,381
1979	23,899
1980	17,230

(2) It is believed that the trade in canned peaches and pears will decrease substantially as a result of the excess subsidies being paid by the EEC. Over a period of time, these subsidies may eliminate all such exports into the EEC from the U.S. and other countries. When this occurs, the United States will face stiffer competition in third country markets from other competing suppliers.

Available data regarding EEC imports of canned peaches already show a movement towards such consequences:

EEC IMPORTS OF CANNED PEACHES (2006.45)

Year	Country of origin	Quantity (M.T.)	Market share (percent)	Value (1,000 ECU)	Unit value (ECU/M.T.)
1977	Germ. Fed.	227	1.0	222	978
	Italy	4,094	18.8	1,958	478
	Greece	3,468	15.9	1,428	412
	S. Africa	12,599	57.8	5,397	428
	U.S.	347	1.6	203	585
	Australia	730	3.4	382	523
	Other	327	1.5	274	836
	Total	21,792		9,884	453
	Italy	4,036	19.7	2,006	497
	Greece	4,668	22.7	1,791	384
1978	S. Africa	8,939	43.6	3,736	416
	U.S.	1,790	8.7	762	426
	Australia	425	2.1	225	529
	Other	667	3.2	469	703
	Total	20,525		8,989	438
	France	253	1.3	136	536
	Italy	7,110	35.3	3,353	472
1979	Greece	5,126	25.5	2,091	406
	S. Africa	6,347	31.6	2,841	448
	U.S.	447	2.4	220	481
	Australia	430	2.1	229	533
	Other	376	1.8	254	676
	Total	20,119		9,124	454

EEC IMPORTS OF CANNED PEACHES (2006.45)—Continued

Year	Country of origin	Quantity (M.T.)	Market share (percent)	Value (1,000 ECU)	Unit value (ECU/M.T.)
1980	Italy	5,615	33.5	2,481	442
	Greece	4,993	29.8	2,039	408
	S. Africa	5,236	31.2	2,703	516
	U.S.	228	1.4	137	601
	Australia	391	2.3	218	558
	Other	303	1.8	260	924
	Total	16,766		7,868	469

EEC IMPORTS OF CANNED PEARS (2006.41)

Country of origin	Quantity (M.T.)	Market share (percent)
1978		
Italy	4,963	47.5
Spain	424	4.1
S. Africa	3,596	34.4
U.S.	615	5.9
Australia	573	5.5
Other	271	2.6
Total	10,442	
1979		
Italy	5,929	56.5
Spain	323	3.1
S. Africa	3,174	30.2
Australia	863	8.2
Other	205	2.0
Total	10,494	
1980		
Italy	8,191	74.4
Spain	213	2.0
S. Africa	1,875	17.0
Australia	464	4.2
Other	265	2.4
Total	11,008	

As the data above indicates, member countries of the EEC have experienced large market share increases since the institution of the subsidy system, while nonmember countries have suffered equally large trade losses. Because the volume of South African imports are higher than those from the other nonmember countries, its trade reduction is the most pronounced. U.S. trade losses, however, are proportionally significant and should not be permitted at a time of high U.S. trade deficits. As the U.S., South Africa and other nonmember countries experience trade reductions with the EEC, competition in third country markets, such as Canada, Japan and the United States will inevitably intensify.

A similar trade pattern is materializing for canned pears (2006.41). Italy's market share of EEC imports of this commodity has soared from 47.5% in 1978 to 74.4% in 1980. At the same time, South Africa's market share has dropped from 34.4% in 1978 to 17.0% in 1980. The United States market share, too, decreased from 5.9% in 1978 to a level so low in 1980 that it was no longer separately broken out in EEC statistics. As with canned peaches, the result of such trade displacement can only be increased competition in third country markets.

The subsidies on raisins are such that principle brokers for U.S. raisins in both West Germany and the United Kingdom have advised United States exporters that they will not be able to import raisins during the coming season. As of the date of this petition, traditional importers within the EEC of U.S. raisins are not making commitments for U.S. raisins. A survey of the industry indicates that there is no business taking place, European importers are basing their inability to sell U.S. raisins is a result of European subsidies being granted to Greek raisins.

Additionally, testimony at the hearing will conclusively establish the uncertainty and confusion caused in the trade, which is equally as damaging. It is important for this Committee to understand that trade confidence on the part of the individuals actually conducting foreign trade is of more importance than historical statistics. This information is most readily established by oral testimony. The only basis for not accepting such evidence would be the view that private sector testimony is not reliable. Knowing that the United States relies heavily on advice from the private sector, it is believed this Committee will concur that the best source of this information is from oral testimony.

(3) The subsidy complained of is inconsistent with Article XVI of the General Agreements on Tariffs and Trade. That Article provides in pertinent part:

" * * * 1. If any Contracting Party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly * * * to reduce imports of any products into its territory, it shall notify the Contracting Parties in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into * * * its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other Contracting Party is

caused or threatened by any such subsidization, the Contracting Party granting the subsidy shall, upon request, discuss with the other Contracting Party or Parties concerned, or with the Contracting Parties, the possibility of limiting the subsidization."

The subsidy act, policy and practice complained of by the petitioners directly and indirectly reduces imports of the petitioners products into the EEC, resulting in serious prejudice to the interests of the United States.

None of the petitioners have filed or presently intend to file for other forms of relief under the Trade Act of 1974 or any other provision of the law. This is due to the fact that petitioners have confidence that their government can resolve this matter if it wishes to do so.

This Committee's attention is further directed to Report No. GR 1046 of the Agricultural Counselor in Athens, Greece, consisting of 11 pages with a code number 10A, which describes in further detail the situation with respect to Greek raisin production. The Committee's attention is further directed to the Department of Agriculture's Foreign Agricultural Circulars on canned deciduous fruits and dried fruits, which provide a full set of historical statistics on the trade in canned peaches, canned pears and raisins. It is certain that the Committee would agree that it is unduly burdensome to require the petitioners to incur the expense of reproducing the government documents that are readily available to this Committee through the representative of the Department of Agriculture.

The petitioners request, pursuant to 15 CFR 2006.7, that a public hearing be held within 30 days after the date of an affirmative determination upon this petition. The petitioner's again reiterate their request for expedited handling of this petition and the hearing because of the serious damage being incurred both by the petitioners and by the United States economy through the loss of foreign exchange generated by petitioners' exports. The petitioners ask that this petition be acted upon well in advance of the 45 day statutory period due to the fact that the United States has previously requested consultations with the European Economic Community. The first such consultations took place in 1978 on canned peaches and canned pears. The United States is currently preparing for consultations on canned peaches, canned pears and raisins in connection with its request to consult with the European Economic Community on these matters on November 8, 1981 in conjunction with the Australian case previously filed.

Based on the foregoing, the petitioners urge the President, the United States Trade Representative and this Committee to proceed directly to Article XXIII:1 without waiting for a determination with respect to this petition or for the hearing to be held in connection with this case. This is a matter of utmost importance to the petitioners. The petitioners further urge that this case be accepted and scheduled for hearing at the earliest opportunity.

Sincerely yours,

Julian B. Heron, Jr.

JBH/hbb

cc: The President

The Honorable William E. Brock

In addition to the petition, the petitioner has submitted supplementary trade data and copies of pertinent foreign regulations, which are available for review in the Office of the United States Trade Representative, Room 222, 600 17th Street, N.W., Washington, D.C. 20506. For further information, contact Jane Bradley, Assistant General Counsel, Office of the United States Trade Representative: (202) 395-3432.

Jeanne S. Archibald,

Chairman, 301 Committee.

December 10, 1981.

[FR Doc. 81-30015 Filed 12-15-81; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

[Order No. 412; Docket No. MC82-1]

**Mail Classification Schedule, 1981
Express Mail Flexible Acceptance
Times; Order Granting Petitions for
Intervention, Allowing Participation
and Fixing Date for Settlement and
Technical Conferences**

Issued: December 10, 1981.

The United States Postal Service, on November 10, 1981, filed with the Postal Rate Commission a request for a recommended decision on proposed changes in the acceptance time for Regular Express Mail. The Commission issued a notice to that effect on November 16, 1981. The notice was published in the *Federal Register* on November 23, 1981 (46 FR 57403). The notice announced the docketing of the Postal Service's request as MC82-1 and directed persons who wished to participate in Docket No. MC82-1 to file, on or before December 1, 1981, petitions for leave to intervene or requests for leave to be heard as a limited participator. The notice also invited persons who wished to express their views, but did not wish to become a party or a limited participator, to file comments (see 39 CFR 3001.19-20). Additionally, the notice pointed out that the Postal Service requested waiver of certain filing requirements of the Commission's rules of practice.¹ The notice directed that persons who wished to address this request file their answers by October 1, 1981. To date, two responses to the Postal Service's motion have been filed. The Commission is considering the Postal Service's request and will issue an order subsequently. On December 8, 1981, the Postal Service filed a motion requesting that a

¹ The Postal Service requested waiver of rule 64(e); rule 64(h) except for rule 64(h)(2)(i) insofar as it requests the statement required by 54(q) and 54(r); and rule 64(d) insofar as it incorporates 54(h), 54(f), and 54(j).

settlement and/or technical conference be held in this case, in lieu of hearings.

I. Intervention

Two persons have petitioned to intervene in Docket No. MC82-1 and two persons have requested to be heard as limited participants. These persons are listed in Attachment A. In order to advise these persons of their status at the earliest possible date and to establish an initial service list for this docket, we have decided to rule on the petitions at this time, subject to reconsideration on the basis of any answers which may be filed.

The persons listed in Attachment A either are users of the mails or have otherwise demonstrated an interest in Docket No. MC82-1. Accordingly, the requests for participation will be granted, subject to reconsideration as noted above.

Pursuant to section 65 of the rules of practice (39 CFR 3001.65) the Service will be required to serve copies of its Request and its prepared direct evidence upon the persons identified in Attachment A and upon the Officer of the Commission. Where service upon more than one representative has been requested in the petition to intervene or request to be heard as a limited participant, the Service will be required to serve only the first two named representatives in the petition. See sections 12 (c) and (d) of the rules of practice [39 CFR 3001.12 (c)-(d)].

II. Officer of the Commission

The Commission's notice dated November 16, 1981, designated Mark T. Stephens, Esquire, as Officer of the Commission (OOC) in this docket. The Officer of the Commission is designated to represent the general public. [See 39 U.S.C. 3624(a)]. During this proceeding, the OOC will direct the activities of Commission personnel assigned to assist him, and neither he nor any such personnel will participate in or advise as to any Commission decision in the case. See 39 CFR 3001.8. The OOC will supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case. In this proceeding the OOC shall be separately served three copies of all filings in addition to, and simultaneously with, service on the Commission of the 25 copies required by section 10(c) of the rules of practice [39 CFR 3001.10(c)].

III. Date of the Settlement and Technical Conference

On December 8, 1981, the Postal Service filed a motion requesting that a settlement conference and/or technical conference be held on December 15, 1981.² In support of its request, the

Postal Service states its belief that the issues in this proceeding are not complex and can be resolved or reduced through settlement.³ In support of a technical conference being held, the Postal Service claims that a technical conference held in conjunction with the settlement conference or at another time would enable parties to gain a better understanding of the proposal and the testimony of witness Knowles.⁴ The Postal Service also states that it has the assent of all the parties, except Purolator, who takes no position at this time, to the conferences being held on December 15, 1981.⁵

In light of the agreement between the Postal Service and most of the parties to this proceeding, and because it appears that this case, or portions of it, may be amenable to a settlement we believe that a settlement conference would be useful in this case as well as help expedite matters.⁶ In accordance with past practice, we are directing the OOC to coordinate this conference. We have also made provisions for reports on the results of this conference.

In regard to the Postal Service's request that the parties provide witness Knowles with written questions two days prior to the conference, we perceive that the short length of time between the filing of this request and the date of the conference, and the intervening weekend may present obstacles to parties' compliance with such a directive. Instead, we direct the parties to submit their questions as soon as possible but, in any event, no later than Monday, December 14, 1981, before noon.

In accordance with the Postal Service's motion and our view of this case, we have not scheduled a prehearing conference in this case at this time. We believe it would be better to wait until after the settlement and technical conferences have been held before considering further the utility of a prehearing conference. It may be that a prehearing conference would serve no useful purpose in this case.

We are also not ruling on the Postal Service motion, filed November 10, 1981, for a waiver of certain filing requirements contained in Rule 64(h).⁷ However, parties may discuss their data needs with respect to the Postal

Service's motion for waiver at the settlement conference.

The Commission orders:

(A) Each of the petitioners identified in Attachment A to this Order is hereby permitted to intervene or to become a limited participant in this proceeding, subject to the provisions of paragraph (B), below.

(B) The participation of the intervenors and limited participants permitted by paragraph (A), above, is subject to the rules and regulations of the Commission: *Provided, however*, That their participation shall be limited to matters affecting rights and interests specifically set forth in their respective petitions to intervene and requests to become limited participants, and *Provided, further*, That the admission of such intervenors and limited participants shall not be construed as recognition by the Commission that they, or any of them, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(C) The Postal Service shall serve copies of its Request and its prepared direct evidence upon representatives of petitioners permitted to intervene and the representatives of the limited participants. For purposes of such service, where service upon more than one representative has been requested in the petition to intervene or in a request for leave to be heard as a limited participant, including those petitions and requests filed jointly and severally by two or more persons, only the first two named representatives in the petition need be served.

(D) The Postal Service also shall serve copies of its Request and its prepared direct evidence on the OOC. Service of documents on the Commission does not constitute service on the OOC, who shall be served separately three copies of all documents.

(E) The Postal Service's motion of December 8, 1981, for settlement and technical conference, in lieu of hearings is granted, subject to reconsideration.

By the Commission.

David F. Harris,
Secretary.

Persons filing petitions to intervene:

J.C. Penney Company, Inc.
Mail Order Association of America

Persons filing requests to become limited participants:

American Retail Federation
Purolator Courier Corporation

[FR Doc. 81-35872 Filed 12-15-81; 8:45 am]

BILLING CODE 7715-01-M

² Motion of the United States Postal Service for a Settlement Conference and/or Technical Conference, December 8, 1981.

³ *Id.* at 1.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

⁶ Under these circumstances the Commission is granting this motion, subject to reconsideration if any response is filed without waiting for the time for filing responses to expire.

⁷ Except for Rule 64(h)(2)(i) insofar as it incorporates Rules 54(q) and (f).

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 12094; 811-1591]

**Chase Frontier Capital Fund of Boston,
Inc.; Filing of Application**

December 9, 1981.

Notice is hereby given that Chase Frontier Capital Fund of Boston, Inc., 535 Boylston St., Boston, MA 02116, ("Applicant"), a Massachusetts corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 24, 1981, for an order of the Commission, pursuant to section 8(f) of the Act, declaring the Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that, pursuant to an Agreement and Plan of Reorganization, on February 27, 1981 Applicant transferred substantially all of its assets to another registered investment company, Phoenix-Chase Series Fund ("Fund"), a Massachusetts business trust, in exchange for shares of beneficial interest in the Phoenix-Chase Stock Fund Series ("Stock Series") and the assumption by the Fund of all liabilities of Applicant.

Applicant states that Plan of Reorganization was approved by the directors of Applicant on December 18, 1979. It is also stated that, at a special meeting of the shareholders of Applicant held on December 17, 1980 and adjourned to February 12, 1981, the Plan was approved by a two-thirds vote of the outstanding shares of Applicant entitled to vote at the meeting, as required by Massachusetts law. Applicant represents that, pursuant to the Plan, in exchange for Applicant's assets, Stock Series shares were distributed pro rata to the former shareholders of Applicant in complete cancellation and retirement of all of the issued and outstanding shares of Applicant. This transfer was accomplished, through the Fund's transfer agent, by registering in the name of each former shareholder of Applicant the number of shares of the Stock Series to which each shareholder has become entitled. Applicant states that the number of shares of Stock Series received by Applicant was determined by dividing the aggregate value of net assets transferred by

Applicant by the net asset value per share of the Stock Series of as the close of business on February 26, 1981.

Applicant asserts that, under this Plan, its assets were exchanged for an aggregate of 1,750,846,486 shares of beneficial interest of Stock Series, having a total value of \$14,417,896.65, which were distributed to the shareholders of record of Applicant on February 27, 1981. It is stated that each former shareholder received one share of Stock Series for each share of Applicant.

The application states that Applicant's Articles of Dissolution were filed with the Secretary of State of the Commonwealth of Massachusetts on May 14, 1981, whereupon Applicant was dissolved. Finally, it is asserted that Applicant does not intend to engage in any further business activities other than those necessary to wind up its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and order issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-35018 Filed 12-15-81; 9:45 am]

BILLING CODE 8010-01-M

[Release No. 12093; 811-1822]

**Chase Special Fund of Boston, Inc.;
Filing of Application**

Notice is hereby given that Chase Special Fund of Boston, Inc., 535 Boylston St., Boston, MA 02116, ("Applicant"), a Massachusetts corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 24, 1981, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that, pursuant to an Agreement and Plan of Reorganization, on February 27, 1981 Applicant transferred substantially all of its assets to another registered investment company, Phoenix-Chase Series Fund ("Fund"), a Massachusetts business trust, in exchange for shares of beneficial interest in the Phoenix-Chase Stock Fund Series ("Stock Series") and the assumption by the Fund of all liabilities of Applicant.

The application states that on December 18, 1979, the directors of Applicant approved the Plan of Reorganization. It is further stated that, at a special meeting of the shareholders of Applicant held on December 17, 1980 and adjourned to February 12, 1981, the Plan was approved by the affirmative vote of two-thirds of the outstanding shares of Applicant entitled to vote at the meeting, as required by Massachusetts law. Applicant asserts that pursuant to the Plan, on February 27, 1981, Applicant transferred its assets to the Fund and in return, Stock Series shares were distributed pro rata to the former shareholders of Applicant in complete retirement and cancellation of all of the issued and outstanding shares of Applicant. The application states that this distribution was accomplished, through the Fund's transfer agent, by registering in the name of each former

shareholder of Applicant the number of shares of the Stock Series to which each had become entitled. Applicant represents that the number of shares of Stock Series that it received was determined by dividing the aggregate value of the net assets transferred by Applicant, by the net asset value per share of the Stock Series as of the close of business on February 26, 1981.

Applicant states that its assets were exchanged for an aggregate of 1,549,207.266 shares of Stock Series, having a total value of \$12,749,711.44, which were distributed to Applicant's shareholders of record on February 27, 1981. It is asserted that each former shareholder of Applicant received 1.4273 shares of Stock Series for each share of Applicant.

The application states that, on May 14, 1981, Applicant filed Articles of Dissolution with the Secretary of State of the Commonwealth of Massachusetts, whereupon Applicant was dissolved. Finally, Applicant states that it does not intend to engage in any further business activities other than those necessary to wind up its business affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is

ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-35017 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12100; 812-4934]

Connecticut Mutual Life Insurance Co. and Panorama Separate Account; Filing of Application

December 10, 1981.

Notice is hereby given that Connecticut Mutual Life Insurance Company ("Connecticut Mutual") and Panorama Separate Account ("the Account"), 140 Garden Street, Hartford, Connecticut 06115, a separate account of Connecticut Mutual registered as a unit investment trust under the Investment Company Act of 1940 ("Act") (referred to collectively herein as "Applicants"), filed an application on August 4, 1981, for an order of the Commission, pursuant to section 6(c) of the Act, exempting certain transactions from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 22(e), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2) and 27(d) of the Act, and Rule 22c-1 promulgated thereunder, and for Commission approval of certain offers of exchange pursuant to sections 11(a) and 11(c) Act to the extent necessary to permit Applicants to offer the variable annuity contracts described in the application. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Connecticut Mutual is the depositor and sponsor of the Account which was established on May 27, 1981, in accordance with authorization by the board of directors of Connecticut Mutual. It is the separate account in which Connecticut Mutual sets aside and invests the assets attributable to the contracts described below. Purchase payments, net of charges applicable at the time of purchase, will be allocated according to instructions from the contractowner to one of more sub-accounts of the Account. Each subaccount will invest solely in shares of Connecticut Mutual Financial Service Series Fund I ("Fund"), an open-end diversified investment company registered under the Act. The Fund will consist of four investment divisions, each of which will issue a series of

stock. Each series of stock will represent the interest in a separate portfolio of the Fund. The portfolios that will be established are: (1) The stock portfolio, (2) the long-term bond portfolio, (3) the intermediate-term bond portfolio, and (4) the money market portfolio. Shares of the portfolios will be sold to the Account at net asset value. A contractowner will be able to transfer the values of his or her sub-account from one or more sub-accounts to another. There will be no limit on the number of transfers that may be made before the life annuity commencement date but thereafter only one transfer request per calendar year will be allowed.

Connecticut Mutual Financial Services, Inc., ("Financial Services"), a subsidiary of Connecticut Mutual, will act as the principal underwriter and investment adviser to the Fund, and perform all the sales and administrative functions including keeping all records not maintained by the custodian. State Street Bank and Trust, Boston, Massachusetts (the "Custodian") will serve as Custodian of the assets of the Account.

The Account proposes to offer two forms of variable annuity contracts: (1) A single-premium annuity with payments beginning immediately ("single-premium immediate contract") and (2) a periodic payment or single-premium annuity with annuity payments beginning at a future date ("deferred contract"). These contracts are designed and will be offered for use in connection with (i) plans qualified under sections 401(a) or 403(a) of the Internal Revenue Code, including plans established by persons entitled to the benefits of the Self-Employed Individuals Tax Retirement Act of 1962, as amended, (ii) annuity purchase plans adopted by public school systems and certain tax-exempt organizations according to section 403(b) of the Internal Revenue Code, (iii) annuity purchase plans adopted according to section 408 of the Internal Revenue Code including Individual Retirement Annuities, (iv) governmental plans as defined in section 414(d) of the Internal Revenue Code including employee pension plans established for employees by a state, a political subdivision of a state, or an agency or instrumentality of either a state or a political subdivision of the state, and (v) certain eligible deferred compensation plans as defined in section 457 of the Internal Revenue Code.

Such plans' participation are placed in the tax-qualified sub-accounts. These contracts may also be used in conjunction with retirement plans that are not qualified under these sections

and to fund nongovernmental deferred compensation plans. Participations of such plans are placed in the non tax-qualified sub-accounts.

For a single-premium immediate contract, there will be deducted from the purchase payment a policy fee of seventy dollars (\$70.00) plus a sales charge computed as a percentage of the amount remaining after the policy fee and any premium tax, as follows: Three percent (3%) of the first \$10,000, two percent (2%) of the next \$90,000 and one percent (1%) of any amount in excess of \$100,000. The purchase payments under a deferred contract will not be subject to a deduction for sales charges. Further, each calendar year a deferred contractowner will be allowed to redeem up to ten percent (10%) of the accumulated value (as of the beginning of the applicable calendar year) without incurring a sales charge. During the first fifteen (15) years of a deferred contract's existence, however, any redemption in excess of ten percent (10%) of the accumulated value will be subject to a deferred sales charge: Five percent (5%) of the amount withdrawn during the first five (5) years, four percent (4%) during the next five (5) years, and three percent (3%) during the final five (5) years. The percentages will be applied to the redemption proceeds, after deduction for any transaction or maintenance charge. Amounts paid under a non-life variable annuity option are treated as redemptions for this purpose. Should a deferred contractowner, during the first three (3) years of a deferred contract's existence prior to the contract maturity date, choose to purchase a variable life annuity option, a sales charge will be withheld: during the first year, three percent (3%) of the amount applied to provide a variable payout (after deduction of any transaction charge); during the second contract year, two percent (2%); during the third contract year, one percent (1%). The deferred sales charges are intended to reimburse Connecticut Mutual for expenses that are related to contract sales. Applicants agree that the aggregate contingent deferred sales load shall not exceed nine percent (9%) of the total purchase payments under the contract.

The annuity tables contained in the contracts will be guaranteed for the life of the contract, even though the longevity of annuitants may exceed that assumed by Connecticut Mutual. Similarly, the amount of the transaction and maintenance charges may not be increased to more than twice their current level even though Connecticut Mutual's expenses may increase over time by more than that amount. Finally,

the account fee on single-premium immediate annuity contracts may or may not cover all expenses associated with that contract over time. For assuming these mortality and expense risks attendant to the contracts, Connecticut Mutual will make a daily charge against the net asset value of the Account in an amount equal to .002% (0.73% annually). The level of this charge will be guaranteed: should the actual cost of mortality and expense risk exceed the charges, the loss will be absorbed by Connecticut Mutual. If, on the other hand, the charges are more than sufficient, any excess will be added to the surplus of Connecticut Mutual (subject to any possible dividend declared with respect to the contracts, which are issued on a participating basis).

In the case of deferred contracts, each partial redemption and each transfer request before the annuity commencement date will be subject to a ten dollar (\$10.00) charge for each sub-account from which funds are withdrawn ("Transaction Charges"). This charge may be increased to an amount not in excess of twice the current amount, i.e., up to twenty dollars (\$20.00). Finally, in the case of deferred contracts prior to the contract maturity date, there will be an annual maintenance charge to offset the administrative costs attributable to these contracts. The amount of the charge, thirty dollars (\$30.00), will be deducted from the accumulated value of each sub-account on December 31 of each calendar year or at such earlier time as a full redemption is made. This charge may be increased to an amount not in excess of twice the current amount, i.e., up to sixty dollars (\$60.00).

Sales Load

Section 2(a)(35) of the Act, as here pertinent, defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premium, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants assert that deferring the charge, and conditioning it upon the occurrence of an event which might not occur, does not change the basic nature of the charge, which is in every other respect a sales charge. Nonetheless, because the nature of the charge raises a question whether it

meets the technical definition of section 2(a)(35), Applicants request an exemption from section 2(a)(35) to the extent necessary or appropriate to permit the offer of the deferred contracts with the described contingent deferred sales charge arrangement.

Section 22(c) of the Act and Rule 22c-1 promulgated thereunder provide, in pertinent part, that no registered investment company selling any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security that is next computed after receipt of a tender of such security for redemption. Applicants believe that the redemption value of the deferred contracts will be determined in a manner consistent with the requirements of Rule 22c-1. In order to avoid any doubt about the possibility of an adverse interpretation of section 22(c) or Rule 22c-1, Applicants have requested an exemption from those provisions to the extent necessary to permit the offer of the deferred contracts with the described contingent deferred sales charge arrangements.

Section 2(a)(32) of the Act, in pertinent part, defines a "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell any such certificate unless such certificate is a "redeemable security." Accordingly, Applicants request an exemption from the provisions of sections 2(a)(32) and 27(c)(1) to the extent necessary to permit the offer of the deferred contracts with the described contingent deferred sales charge arrangement.

Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances and receive the value of this account and an amount equal to that part of the excess paid for sales loading which is over 15 percent (15%) of the gross payments made by the certificate holder. Accordingly, Applicants seek an exemption from the provisions of section 27(d) to the extent necessary to permit the offer of the deferred contracts with the described contingent deferred sales charge arrangement.

Section 26(a)(2)(C) of the Act provides, in relevant part, that no payment to the depositor of or a principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an expense except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping or other administrative services normally performed by the trustee or custodian. Section 27(c)(2) of the Act makes it unlawful for any registered investment company issuing periodic plan certificates or for any depositor or underwriter for such company to sell any such certificate unless the proceeds of all payments on such certificates (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1), and are held by such trustee or custodian under an indenture or agreement containing, in substance, the provisions required in sections 26(a)(2) and (3). In order to avoid any possibility that questions might be raised as to the potential applicability of sections 26(a)(2)(C) and 27(c)(2), Applicants request an exemption from the operation of the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the offer of the deferred contracts with the described contingent deferred sales load.

Administrative Fees

Sections 26(a)(2)(C) and 27(c)(2) are described above. Applicants request an exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the payment to Financial Services of the annual maintenance charge and the transaction charges, as set forth above. Applicants consent that the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) may be made subject to the following conditions: (1) That the continuing effectiveness of any order issued by the Commission in response to this application will be conditional on Applicants' obtaining Commission approval before increasing the transaction charge imposed with regard to partial redemptions; (2) that the deductions under the contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe and the Commission may reserve jurisdiction for such purposes; and (3) that the payment of sums and charges out of the assets of the Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent

to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets, other than the charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

Texas Optional Retirement Program

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available to their faculty members an Optional Retirement Program, codified as Subchapter G of Chapter 51 of the Texas Education Code, as an alternative to the existing Teachers Retirement System. The statute provides as the funding media for the Optional Retirement Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. A faculty member who elects to participate in the Optional Retirement Program and the institution of higher education that employs him normally enter into an agreement under which the faculty member's salary is reduced by the amount of his contribution and the institution contributes an equal amount to provide for the purchase of the annuity contract selected by the faculty member.

In 1973, the Texas legislature passed two amendments to the Optional Retirement Program statute, effective June 14, 1973. First, the legislature amended the statutory definition of the Optional Retirement Program in paragraph (6) of § 51.352 of Subchapter G to provide that the benefits of such annuities are to be available only upon termination of employment in the Texas public institutions of higher education, retirement, death or total disability of the participating faculty member. The second amendment added a new § 51.358 to Subchapter G with a similar provision that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement or terminates employment in the Texas public institutions of higher education.

Because of uncertainty regarding the effect of these amendments, the University of Texas System requested the opinion of the Attorney General of Texas with respect to several questions concerning such amendments. The Attorney General rendered an opinion dated February 18, 1975, in response to

the System's letter. The Attorney General interprets Section 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Optional Retirement Program on or after June 14, 1973, that make available the redemption value of the contract prior to the occurrence of one of the conditions specified in the statute, i.e., termination of employment, retirement, death or total disability. Thus, with respect to deferred contracts sold to participants in the Optional Retirement Program, Applicants would be required, by some method, to restrict the right of the contractowner to redeem the contract in accordance with the Attorney General's opinion. Applicants state that the opinion does not affect the right of a participant to transfer the redemption value of his annuity contract from one carrier to another and that the granting of the relief requested would not affect such right.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven (7) days after the tender of such security to the company or its agent designated for that purpose for redemption, except in certain prescribed circumstances. Sections 27(c)(1) and 27(d) of the Act are described above. Applicants request an order, pursuant to section 8(c) of the Act, exempting them from the provisions of sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with § 51.358 of the Texas Education Code so that redemption values under deferred contracts issued to participants in the Optional Retirement Program may be made available, in accordance with the opinion of the Texas Attorney General cited above, only upon termination of employment in the Texas public institutions of higher education, retirement, death or total disability of the participating faculty member.

If the requested order is granted, Applicants state that they will ensure that the appropriate disclosure is made to Applicants who are participants in the Optional Retirement Program informing them of the restriction on the availability of redemption values under deferred contracts to be issued to them. Specifically, Applicants will make appropriate reference in each prospectus used in the Texas Optional Retirement Program market to the restriction on redemption and will require each participant, as a part of the determination that the sale of these

contracts is suitable for that Applicant, to sign a statement acknowledging such restriction. Connecticut Mutual will ensure that the substance of the above disclosures is included in any sales literature used in the Optional Retirement Program market. All sales literature that is to be used in connection with the sale of contracts in the Texas Optional Retirement Program market will be reviewed for the existence of material representations inconsistent with the restrictions described in the application to be placed on such contracts, and the sales people involved in soliciting in this market will be instructed to bring these restrictions to the attention of potential purchasers.

Annual Maintenance Charge

The provisions of the Act relating to the right of redemption, which are discussed in the above under the heading "Sales Load," may be equally applicable to the annual maintenance charge applied to deferred contracts at such time as a full redemption is made. Accordingly, Applicants request exemptions from the provisions of sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act, and Rule 22c-1 promulgated thereunder, to the extent necessary to permit deduction of the annual maintenance charge as described.

Open Account Arrangement

Section 26(a)(2)(D) of the Act, as here pertinent, provides that the trustee or custodian shall have possession of all securities and other property in which the funds of the trust are invested. Applicants request an exemption from section 26(a)(2)(D) of the Act to the extent necessary to permit shares of the Fund, the only assets in which the Account invests, to be held under an open account arrangement without the use of stock certificates or the physical possession of the shares by the Custodian. Because the purchase, redemption, and ownership of Fund shares will, pursuant to the proposed open account arrangement be shown only on the books and records of the Account and the Fund and will not be represented by delivery of stock certificates, Applicants assert that there is no need for the Custodian to have physical possession of the Fund shares.

Offers of Exchange

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment

company to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset value of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants propose that the contract purchasers be permitted to transfer all or part of their investment in one sub-account of the Account to another sub-account, subject to certain limitations on the frequency and amount of transfers. Such transfers will, subject to a ten dollar (\$10.00) transaction charge, give the contractowner an equivalent dollar value in the sub-account to which the transfer is made. Applicants request approval pursuant to section 11(a) and 11(c) of the Act to permit this transfer privilege under the Contracts, where permitted under applicable law and by the retirement plan under which such Contracts may be issued.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act or any rule or regulation under the Act if, and to the extent, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 31, 1981, at 5:30 p.m., submit to the Commission in writing a request for hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act,

an order disposing of the application will be issued as of course following December 31, 1981 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-35915 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12098; 812-4953]

The Floating Rate Insured Trust, Pennsylvania Series 1 (and Subsequent Series) and E. F. Hutton & Co., Inc.; Filing of Application for Exemption Order

December 10, 1981.

Notice is hereby given that The Floating Rate Insured Trust, Pennsylvania Series 1 (And Subsequent Series) ("Trust"), One Battery Park Plaza, New York, New York 10004, a non-diversified, closed-end management investment company registered under the Investment Company Act of 1940 ("Act"), and its sponsor, E. F. Hutton & Company, Inc. ("Sponsor," and referred to herein with the Trust as "Applicants"), One Battery Park Plaza, New York, New York 10004, filed an application on August 19, 1981, pursuant to sections 6(c) and 23(c)(3) of the Act for an order exempting the Trust from the provisions of section 19(b) of the Act and Rule 19b-1 thereunder to the extent necessary to permit the Trust to distribute long-term capital gains more than once per year, and from the notice provisions of section 23(c) of the Act and Rule 23c-2 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that the Sponsor has established the Trust under the laws of the State of New York by a Trust Declaration and Indenture, dated as of August 17, 1981. It is asserted that the investment objective of the Trust is insured income exempt from federal income taxation and from state and local income taxation in the Commonwealth of Pennsylvania through

investment in a portfolio of insured, tax-exempt, floating rate industrial development revenue bonds (individually, "Security;" collectively, "Securities"), issued by state or municipal agencies or industrial development authorities of Pennsylvania ("Issuers"). Revenues to make payments of principal and interest on the Securities will be derived from lease or loan obligations relating to specific projects financed from the sale of the Securities for use by private entities ("Obligors"). Applicants state that each of the Securities will be secured by a lease purchase, installment sale or loan agreement with the Obligors, an indenture of trust with the Issuer and in many instances a mortgage from the Issuer or the Obligor.

The application states that Securities will be selected for inclusion in the Trust by the Sponsor, based on conformity of the Securities to the investment criteria established in the Declaration of Indenture. These criteria include:

1. An Insurance Policy to the Trust, guarantying the complete and timely payment of principal and interest on the Securities, issued by the American Municipal Bond Assurance Corporation;
2. An appropriate debt obligation rating by Standard & Poor's Corporation;
3. Principal payment due by Issuer each December 1, commencing December 1, 1983;
4. Principal prepayment on any interest or principal payment date subsequent to December 1, 1983, generally without prepayment premium or penalty;
5. Floating interest rate based on the Sponsor's floating rate formula, payable semiannually on each June 1 and December 1;
6. Scheduled to mature not later than December 1, 1996; and
7. Subject to mandatory redemption within 15 business days after notice of an official determination by the Internal Revenue Service that interest payments on a Security are taxable.

The application states that the interest on the pass-through bond certificates issued by the Trust ("Bond Certificates") will be based upon the floating interest rate formula established for the Securities. The trust indentures pursuant to which each of the Securities will be issued will contain a uniform floating rate formula. Interest on the Securities will be payable semiannually on December 1 and June 1. The interest payable on each December 1 and June 1 will be the semiannual payment due based on (i) a per annum interest rate ("Average Interest Rate") which is the arithmetic average of all weekly interest indices in effect from the beginning of the interest payment period until seven business days before such December 1

or June 1, plus (ii) .20% per annum on the Securities held in Trust.

The interest index determined each week will be the higher of the Short-Term Interest Factor (a percentage of the interest rate applicable to 13-week U.S. Treasury bills), or the Long-Term Interest Factor (a percentage of the interest rate applicable to U.S. Treasury securities adjusted to a constant maturity of 30 years), determined by Pittsburgh National Bank, Pittsburgh, Pennsylvania. Each weekly interest index will be limited to a minimum and maximum rate range. Applicants further state that, because the annual expenses of the Fund are generally expected to equal .20% per annum of the outstanding principal amount of the Securities, the amount of interest passed through to investors is expected to be the Average Interest Rate on the Securities.

It is asserted in the application that no more than 15% of the aggregate principal amount of the Securities acquired for the Trust's portfolio will be composed of (i) one issue of Securities (ii) secured by payments from one Obligor, (iii) issued by one Issuer, or (iv) secured by Obligors engaged in any one industry. Once selected for inclusion in the Trust, the Trust's portfolio of Securities will be fixed.

Applicants state that the Bond Certificates which the Trust proposes to issue will represent a fractional undivided participating interest in the Securities. The Bond Certificates will not represent debt obligations of the Trust. Bond Certificates will be issued only in registered form in denominations of \$5,000 and multiples thereof. Three persons will be elected annually by the Certificateholders to serve as Trustees of the Trust ("Trustees").

Section 19(b) of the Act provides, in pertinent part, that it shall be unlawful in contravention of such rules, regulations or orders as the Commission may prescribe for any registered investment company to distribute long-term capital gains more frequently than once a year. Rule 19b-1(a) under the Act provides, as herein relevant, that no registered investment company which is a "regulated investment company" as defined by Section 851 of the Internal Revenue Code shall make more than one distribution of long-term capital gains in any one taxable year of such investment company.

Applicants state that, as presently structured, it is anticipated that the Trust will make distributions of three types to Certificateholders:

(1) *Interest Payments*—Interest payments received on the Securities will be passed through to Certificateholders, payable twice yearly, at the rate

determined under the floating interest rate formula.

(2) *Principal Payments*—Each Bond Certificate represents an undivided interest in Securities which mature in various amounts commencing on December 1, 1983 and each December 1 thereafter, to December 1, 1996. The principal amount of such maturing Securities will be passed through the Certificateholders on December 10 of each year, by calling Bond Certificates for redemption.

(3) *Early Redemption*—All of the Securities, under certain circumstances, are subject, in whole or in part, to early redemption. In the event any Security is prepaid in whole or in part by its Issuer, or purchased from the Trust pursuant to its related Insurance Policy, such amounts will be passed through to the Certificateholders by calling Bond Certificates for redemption.

The application further states that Bond Certificates called for redemption will be chosen at random, by a computerized lottery conducted by the depository bank which will hold the Securities, and redeemed in increments of \$5,000 principal amount.

Applicants represent that, while it is anticipated that most Securities will not contain prepayment penalties, it is possible that some of the securities might contain such provisions and that it is possible, therefore, that the Trust may realize capital gains if an Issuer calls or redeems an issue held in the Trust, which call or redemption triggers receipt by the Trust of prepayment premiums or penalties. Applicants propose that such funds will not be distributed to Certificateholders but that such payment premiums or penalties will be transferred to a Reserve Account to meet the administrative fees and expenses of the Trust.

In the event that the Trust's payment mechanisms are modified to permit the distribution of any capital gains to Certificateholders rather than as presently contemplated, Applicants submit that an exemption for section 19(b) of the Act and Rule 19b-1 thereunder would nevertheless be appropriate and in the public interest. Applicants represent that, in the event that capital gains are ever distributed to Certificateholders, their source will be clearly identified by the Trust and the possibility of investor confusion, the harm allegedly sought to be eliminated by section 19(b) of the Act and Rule 19b-1 thereunder, would not exist. Additionally, the Applicants contend that the Trustees of the Trust will not be in a position to control the creation of capital gains in these situations and that

no useful purpose would be served by forcing the Trust to accumulate payments representing capital gains on portfolio securities until the end of the year.

Section 23(c) of the Act prohibits closed-end investment companies from repurchasing their shares except under certain conditions specified in that section, not here pertinent to the Trust, or under such other circumstances as the Commission may permit by rules or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Rule 23c-2 under the Act provides that a closed-end investment company may call or redeem its securities pursuant to the terms of the securities or the charter, indenture or other instrument pursuant to which such securities were issued, provided that, if less than all the outstanding securities of a class or series are to be called or redeemed, the call or redemption shall be made by lot, on a pro rata basis, or in such other manner so as not to discriminate unfairly against any holder of securities of such class or series. The rule also provides for at least 30 days prior notice to the Commission of a company's intention to call or redeem securities, unless notice of redemption is to be published in a newspaper, in which case 10 days prior notice is required. Applicants assert that, but for the Trust's inability to comply with the advance notice requirements of Rule 23c-2, it appears that the substantive provisions of the proposed plan of redemption contemplated by the Trust are permissible under the Rule and will not result in the abuses sought to be prevented by section 23(c).

The application states that, in the Trust's usual course of operation, notice of redemption will be given by letter to the registered Certificateholder at least 15 business days prior to the date scheduled for redemption (or, if not scheduled, the date established for early redemption). To minimize the period during which taxable interest would accrue to Certificateholders, notice of redemption of Bond Certificates due to a determination of the taxability of the interest payable on a Security will be mailed 10 days prior to the date scheduled for redemption. Applicants assert that the Trust seeks to avoid the delay and the costs which would be incurred if the Trust is required to hold and/or reinvest the funds for the benefit of Certificateholders, during the required notice period pending their distribution. Applicants submit that compliance with

the 30 day advance notice requirement of Rule 23c-2(b) would result in an unnecessary delay in the redemption process and thus reduce the benefits of an investment in the Trust without any concomitant protection for its Certificateholders. It is further asserted that the redemption provisions of the Trust avoid the possibility of discrimination against or in favor of any Bond Certificateholder and prevent the Trust from controlling any benefit that might otherwise accrue to it in the event the Trust could delay notice of or payment on redemption. The Trust therefore requests exemption from the notice provisions of Rule 23c-2(b) under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act or any rule or regulation thereunder, if and to the extent that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-30916 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7517]

Flow General Inc., Common Stock, \$.10 Par Value; Application to Withdraw From Listing and Registration

December 10, 1981.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the applications for withdrawing this security from listing and registration include the following:

1. The common stock of Flow General Inc. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on August 28, 1981, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before January 4, 1982, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35910 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35909 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7030]

Integrated Resources, Inc., Common Stock, \$.10 Par Value; Application to Withdraw From Listing and Registration

December 10, 1981.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Integrated Resources, Inc. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on September 2, 1981, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before January 4, 1982, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[Release No. 12095; 811-2026]

Phoenix Fund, Inc.; Filing of Application for Order

December 9, 1981.

Notice is hereby given that Phoenix Fund, Inc. ("Applicant"). One American Row, Hartford, CT 06155, a Maryland corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified investment company, filed an application on June 24, 1981, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that, pursuant to an Agreement and Plan of Reorganization, on January 30, 1981 Applicant transferred substantially all its assets to another registered investment company, Phoenix-Chase Series Fund ("Fund"), a Massachusetts business trust, in exchange for shares of beneficial interest in the Phoenix-Chase Balanced Fund Series ("Balanced Series") and the assumption by the Fund of all the liabilities of Applicant.

Applicant states that on December 18, 1979, the directors of Applicant approved the Plan. It is asserted that, at a special meeting of the shareholders of Applicant held on November 24, 1980 and adjourned to February 28, 1981, the Plan was approved by the affirmative vote of 74.8% of the outstanding shares of Applicant entitled to vote at the meeting. Applicant represents that Maryland law requires the affirmative vote of two-thirds of the outstanding shares unless the charter permits a lower percentage.

The application states that, pursuant to the Plan, Balanced Series shares have been distributed pro rata to the former shareholders of Applicant, in complete cancellation and retirement of all of the issued and outstanding shares of Applicant. It is asserted that the transfer has been accomplished, through the Fund's transfer agent, by registering in the name of each former shareholder of Applicant the number of shares of Balanced Series to which each such

shareholder became entitled as a result of the exchange. Applicant states that the number of Balanced Series shares received by Applicant was determined by dividing the aggregate value of the net assets transferred by Applicant by the net asset value per share of the Balanced Series as of the close of business on January 29, 1981. The application states that the assets of Applicant were exchanged for an aggregate of 2,236,322.978 Balanced Series shares, having a total value of \$19,210,477.33, which were distributed to shareholders of record of Applicant on January 30, 1981. It is asserted that each former shareholder of Applicant received approximately 1.0489 shares of Balanced Series for each share of Applicant.

Applicant represents that its Articles of Dissolution were accepted for record by the Maryland Department Assessments and Taxation on April 1, 1981, whereupon Applicant was dissolved. Finally, Applicant states that it does not intend to engage in any further business activities other than those necessary to wind up its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is

ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-35019 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12097; 811-1826]

Professional Investors Fund, Inc.; Proposal To Terminate Registration

December 9, 1981.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Professional Investors Fund, Inc. ("Fund"), 4250 Broadway, New York, New York 10006, registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of New York in 1969, and that it registered under the Act by filing Form N-8A on March 10, 1969. The Fund did not file the Form N-8B-1 registration statement under the Act nor did it file a registration statement pursuant to the Securities Exchange Act of 1933 in order to make a public offering of its shares. It never filed any of the periodic reports required to be filed under the Act and it never reported that it had any assets. The files indicate that the Fund never engaged in business, and that its organizers abandoned the Fund shortly after it registered under the Act. It thus appears that the Fund is not an investment company within the meaning of the Act.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of that order the registration of that investment company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the proposal accompanied by a statement as to the nature of his interest, the reasons for such request

and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-35020 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-0988]

Coleman Company, Inc.; Application To Withdraw From Listing and Registration

December 11, 1981.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock (\$1 par value) of The Coleman Company, Inc. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on October 15, 1981, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before January 5, 1982, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-35050 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6112]

Nortek, Inc.; Application To Withdraw From Listing and Registration

December 11, 1981.

In the matter of Nortek, Inc., Common Stock, \$1 Par Value, 12½% Subordinated Sinking Fund Debentures (Due 1999).

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

1. The common stock and the debentures of Nortek, Inc. ("Company") are listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on May 8, 1981, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock and the debentures on the Amex and the NYSE.

2. This application related solely to withdrawal of the common stock and the debentures from listing and registration on the Amex and shall have no effect upon the continued listing of the stocks on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before January 5, 1982, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

(FR Doc. 81-35049 Filed 12-15-81; 8:45 am)

BILLING CODE 8010-01-M

(Release No. 12090; (812-4910))

In the matter of Manlex Corporation, Lexington Growth Fund, Inc., Lexington Research Fund, Inc., Lexington Tax Free Daily Income Fund, Inc., Lexington GNMA Income Fund, Inc. and Lexington Money Market Trust, 580 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

Manlex Corp.; et al.; Filing of an Application

December 9, 1981.

Notice is hereby given that Manlex Corporation ("Sponsor"), a New York corporation and the sponsor of Corporate Leaders Trust Certificates, Series B (the "Trust"), a unit investment trust registered under the Investment Company Act of 1940 ("Act"), and Lexington Growth Fund, Inc. ("Growth"), Lexington Research Fund, Inc. ("Research"), Lexington Tax Free Daily Income Fund, Inc. ("Tax Free"), Lexington GNMA Income Fund, Inc. ("Income") and Lexington Money Market Trust ("Money Market"), open-end investment companies registered under the Act (the "Funds", hereinafter collectively referred to with the Sponsor and the Trust as the "Applicants"), filed an application on June 29, 1981, and an amendment thereto on October 29, 1981, pursuant to Section 11 of the Act, for an order approving certain offers of exchange involving the Trust and the

Funds. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants represent that the Trust was organized under the laws of the state of New York pursuant to a Trust Agreement dated November 18, 1935, as amended, between corporate predecessors of the Bank of New York (the "Trustee") and Piedmont Capital Corporation, a Delaware corporation ("Piedmont"). The Applicants further state that Piedmont succeeded Corporate Leaders of America, Inc., as the Trust's sponsor on December 29, 1971, and acted as its principal underwriter from November 1973 until September 30, 1975, when the offering of Trust participations was discontinued. The Applicants further represent that on March 25, 1981, Piedmont designated Manlex Corporation as the present sponsor of the Trust. The Sponsor has designated its sole shareholder Lexington Management Corporation ("Lexington"), a registered broker-dealer and investment adviser, as the principal distributor for the Trust. Lexington also serves as investment adviser and distributor of the Funds.

According to the application, Trust participations had been offered in either the form of monthly payments over a 16 1/2 year period or single payment certificates issuable in face amounts of \$500 or more in multiples of \$100. In November 1973, the Trust amended its registration statement under the Securities Act of 1933, to provide only for the offering of Trust participations in the form of single payment certificates, as the Trust Agreement provisions relating to monthly payment certificates were determined to be inconsistent with the provisions of the Act as amended in 1970. The Applicants further represent that pursuant to an earlier order of the Commission dated November 13, 1973 (Investment Company Act Release No. 8079) the Trust participated in an exchange program with Growth, Research and Income, which terminated on September 30, 1975. In addition, the Applicants state that at November 30, 1980, the market value of the Trust's portfolio was approximately \$52,463,550 and the cost thereof was approximately \$38,324,210. On May 31, 1981 there were outstanding 964 single payment certificates and 4,347 periodic payment certificates. With respect to the uncompleted monthly payment certificates, on May 31, 1981 there was an aggregate amount payable of approximately \$14,580,000.

Applicants state that the provisions of the Trust Agreement require the Trustee

to accumulate funds received for investment, after deduction of a 3% sales creation charge to the Sponsor, until sufficient funds are available for the purchase of ten Stock Units, each such Stock Unit consisting of one share of each of the 26 corporations constituting the Trust's fixed portfolio. The Applicants further state that Trust participations are purchased at the net asset value at the close of business on the day payment is received by the Trustee, plus a sales service charge of 5% of such net asset value and plus a stock unit charge computed monthly, payable to the Trust, approximating the brokerage commissions and odd-lot premiums currently applicable to Stock Unit purchases. Applicants state that income on portfolios securities and proceeds on the sale of additional securities received as stock dividends, stock splits or other recapitalizations are accumulated and distributed to holders of Trust participations semi-annually.

Applicants represent that the Trust pays no investment advisory or other management fee. The Trustee is compensated for its services by annual account fees imposed at the rate of \$3 per year for each monthly payment certificate and 2/10 of 1% of the face amount (with a minimum of \$3.60) per year with respect to each single payment certificate. In addition, the Trustee receives transaction fees of \$1 for each conversion, liquidation, withdrawal or assignment of certificates, a transaction fee of 40 cents for each authentication of an original certificate issued, and a service charge of 1% of the amount of each payment made under monthly payment certificates. The Applicants further represent that the Sponsor does not receive any sales commissions, but rather, has assigned to Lexington the sales service and sales creation charges it would otherwise be entitled to receive under the Trust Agreement. The Applicants state that these sales charges range from 8.48% to 7.17% of the net amount invested under monthly payment certificates, and from 8.23% to 8.17% of the net amount invested under single certificates. There are no sales charges or service fees of any kind to the investor for purchases of shares of Growth, Research, Tax Free, Income or Money Market.

Section 11(c) of the Act provides, in pertinent part, that any offers of exchange involving the securities of a registered unit investment trust and registered open-end investment companies require approval of the Commission under section 11(a) of the

Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company of any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Due to the Trust's status as a unit investment trust, the Applicants request the Commission's approval under section 11(a) of the Act of the proposed exchange offers involving the Trust and the Funds as described below.

The Applicants state that exchanges of Trust participations for shares of the Funds will be on the basis of the relative net asset value per share at the time of exchange. Upon receipt by Lexington of the Trust certificate with the exchange form and necessary supporting documents, which would be forwarded by the Sponsor to the Trustee, the exchange would be effected by redemption of the Trust participations and issuance of the Growth, Research, Tax Free, Income or Money Market shares to the exchanging shareholder. The Applicants further state that the proposed exchange offer would be available only in such states where shares of the Funds are registered for sale and the privilege of exchange is revocable by the Funds and is only available when described in a current prospectus of each of these Funds. Each exchange must involve the minimum initial purchase for the Fund into which the exchange is being made; currently, \$1,000 for Tax Free, Income and Money Market and \$250 for Research and Growth. An offer of exchange by holder of an uncompleted monthly payment certificate of Trust would be effected as described above with respect to Trust participations paid for as the date of exchange. The Applicants further represent that no sales charges or service charges would be imposed in connection with any exchange other than from any applicable withdrawal charge of the Trustee.

The Applicants state that exchanges of shares of the Funds for Trust participations will be on the basis of the relative net asset value per share at the time of exchange. Upon receipt by Lexington of a properly executed exchange form, respective investment company stock certificates, if issued, and necessary supporting documents, the exchange would be effected by

redemption of the Research, Growth, Tax Free, Income or Money Market shares and issuance of a Trust single payment certificate to the exchanging shareholder. An initial exchange must involve a minimum of \$500. The offer of exchange would be available only in such states where the Trust is registered for sale and the privilege of exchange is revocable by the Trust and is only available when described in the current Trust prospectus. The Applicants further state that shareholders of the Funds exchanging their shares for Trust certificates will pay the same charges and fees to which all other investors in the Trust are subject.

In support of the relief requested, the Applicants state that the proposed exchange offers are designed to afford flexibility in the selection of investment media by the respective shareholders of the Trust and the Funds. The Applicants further represent that the proposed exchanges will be effected at the applicable net asset values of the Fund or Trust from which and to which an exchange is being made (after payment of the various charges and fees set forth if the exchange is into the Trust), and is thus consistent with the policy underlying Section 11 of the Act.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc 81-35911 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12092; (811-2184)]

Phoenix Capital Fund, Inc.; Filing of Application

December 9, 1981.

Notice is hereby given that Phoenix Capital Fund, Inc. ("Applicant"), One American Row, Hartford, CT 06155, a Maryland corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 24, 1981, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that on December 12, 1980, pursuant to an Agreement and Plan of Reorganization, Applicant transferred substantially all its assets to another registered investment company, Phoenix-Chase Series Fund ("Fund"), a Massachusetts business trust, in exchange for shares of beneficial interest in the Phoenix-Chase Growth Fund Series ("Growth Series") and the assumption by the Fund of all the liabilities of Applicant.

Applicant states that on December 18, 1979, the directors of Applicant approved the Plan. It is asserted that, at a special meeting of the shareholders of Applicant held on November 28, 1980 and adjourned to December 11, 1980, the Plan was approved by the affirmative vote of 88% of the outstanding shares of Applicant entitled to vote at the meeting. Applicant represents that Maryland law requires the affirmative vote of two-thirds of the outstanding shares unless the charter permits a lower percentage.

It is stated in the application that, pursuant to the Plan, Growth Series shares have been distributed pro rata to the former shareholders of Applicant in complete cancellation and retirement of all of the issued and outstanding shares of Applicant by registering in the name of each former shareholder of Applicant, through the Fund's transfer agent, the number of Growth Series shares to which each such shareholder became

entitled as a result of the exchange. Applicant states that the number of Growth Series shares received by Applicant was determined by dividing the aggregate value of the net assets transferred by Applicant by the net asset value per share of the Growth Series as of the close of business on December 11, 1980. It is asserted that this process was completed, upon the liquidation of a reserve held to complete the payment of a final dividend, on December 15, 1980. Applicant represents that its assets were exchanged for an aggregate of 1,457,373.66 shares of beneficial interest of Growth Series, having a total value of \$12,853,798.43, which were distributed to the 1,773 shareholders of record of Applicant on December 12, 1980. Applicant states that each former shareholder of Applicant received approximately 1.0905 shares of Growth Series for each share of Applicant.

Section 8(f) of the Act provides, in pertinent part, that when the Commission upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Applicant represents that its Articles of Dissolution were accepted for record by the Maryland Department of Assessments and Taxation on April 1, 1981, whereupon Applicant was dissolved. Finally, Applicant states that it does not intend to engage in any further business activities other than those necessary to wind up its affairs.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission

thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[PR Doc. 81-35913 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12091; (811-539)]

Shareholders' Trust of Boston; Filing of Application

December 9, 1981.

Notice is hereby given that Shareholders' Trust of Boston ("Applicant"), 535 Boylston St., Boston, MA 02116, a Massachusetts business trust registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 24, 1981, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that, pursuant to an Agreement and Plan of Reorganization, on January 30, 1981 Applicant transferred substantially all its assets to another registered investment company, Phoenix-Chase Series Fund ("Fund"), a Massachusetts business trust, in exchange for shares of beneficial interest in the Phoenix-Chase Balanced Fund Series ("Balanced Series") and the assumption by the Fund of all the liabilities of Applicant.

Applicant states that on December 18, 1979, the directors of Applicant approved the Plan. It is asserted that, at a special meeting of the shareholders of Applicant held on November 24, 1980 and adjourned to January 28, 1981, the Plan was approved by the affirmative vote of 51% of the outstanding shares of Applicant entitled to vote at the meeting, as required by Applicant's trust instrument.

The application states that, pursuant to the Plan, Balanced Series shares have been distributed to pro rata to the former shareholders of Applicant in complete cancellation and retirement of

all of the issued and outstanding shares of Applicant, registering in the name of each former shareholder of Applicant, through the Fund's transfer agent, the number of Balanced Series shares to which each such shareholder became entitled as a result of the exchange. Applicant represents that the number of Balanced Series shares received by Applicant was determined by dividing the aggregate value of the net assets transferred by Applicant by the net asset value per share of the Balanced Series as of the close of business on January 29, 1981. The application states that the assets of Applicant were exchanged for an aggregate of 4,096,122 shares of beneficial interest of Balanced Series, having a total value of \$35,183,415, which were distributed to shareholders of record of Applicant on January 30, 1981. It is asserted that each former shareholder of Applicant received one share of Balanced Series for each share of Applicant.

Applicant states that it is in the process of winding up its affairs and will be terminated pursuant to the terms of its governing trust instrument. Finally, Applicant asserts that it does not intend to engage in any further business activities other than those necessary to wind up its business affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission

thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-30912 Filed 12-15-81; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 12099; (812-4977)]

Webster Cash Reserve Fund, Inc.; Filing of Application

December 10, 1981.

Notice is hereby given that Webster Cash Reserve Fund, Inc. ("Applicant"), 10 Hanover Square, New York, New York 10005, a no-load, open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on September 25, 1981, for an order of the Commission, pursuant to Section 6(c) of the Act, that would amend an order, previously issued by the Commission pursuant to Section 6(c) of the Act, on August 16, 1979 (Investment Company Act Release No. 10845), which permitted Applicant, subject to certain conditions, to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of \$1.00. In its current application Applicant seeks an amendment which would permit it to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, using the amortized cost method of valuation. Applicant represents that in all other respects, its portfolio securities will be valued in accordance with Investment Company Act Release No. 9786 (May 31, 1977). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant is a "money market" fund designed as an investment vehicle for investors who desire to place assets in money market investments where the primary considerations are safety, liquidity and, to the extent consistent with the foregoing, a high income return. Applicant represents that its portfolio

may be invested in money market instruments consisting of securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities; time deposits maturing in seven days or less and certificates of deposit, including those issued by domestic banks, foreign branches of domestic banks and savings and loan and similar associations; bankers' acceptances; repurchase agreements; and high-grade commercial paper. It is asserted that all of the investments by Applicant consist of obligations maturing within one year from the date of acquisition, and that the average maturity of all its investments (on a dollar-weighted basis) is 120 days or less.

As here pertinent, section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests an

exemption from section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

In support of this request, Applicant states that, as a result of the experience of its sub-investment adviser and administrator in advising Applicant and other funds, it has become apparent that two qualities are helpful in order to attract investment, namely (1) stability of principal and (2) steady flow of investment income. It is asserted that management of Applicant has determined that an average portfolio maturity of 120 days combined with a stable price may accomplish both of these investor aims—that is, it somewhat obviates the possibility of a change in the price per share, while at the same time providing a yield on portfolio instruments related to yields available in the general debt market which is otherwise not available with a portfolio having an average maturity of shorter duration.

Applicant asserts its belief that, given the nature of its policies and operations, there will normally be a relatively negligible discrepancy between market value and amortized cost value of such securities. Applicant believes the valuation of its portfolio securities on the amortized cost basis will benefit shareholders by enabling Applicant to maintain more effectively a stable price per share, while providing its shareholders with the opportunity to receive a flow of investment income less subject to fluctuation than under procedures whereby dividends would be adjusted by all realized and unrealized gains and losses on its portfolio securities. Finally, it is asserted that Applicant's Board of Directors has determined in good faith that in light of the characteristics of Applicant as described above, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for Applicant and reflects fair value of such securities.

Section 6(c) of the Act provides, in part, that the Commission upon application may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the

purposes fairly intended by the policy and provisions of the Act.

As a condition to the granting of the exemption requested, Applicant has agreed that the following may be made conditions of the amendment to the prior order:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purposes of effecting sales, redemptions and repurchases, at \$1.00 per share.

2. Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's \$1.00 amortized cost price per share, and the maintenance of records of such review. Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions selected by its Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market investments furnished by reputable sources.

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1%, the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes that the extent of any deviation from the Applicant's \$1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Applicant's average portfolio maturity; withholding

dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Applicant will limit its portfolio investments, including repurchase agreements if any, to those United States dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

6. The Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than January 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application

accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-35914 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18326; File No. SR-BSE-81-12]

Self-Regulatory Organizations; Proposed Change by Boston Stock Exchange, Inc. Relating to an Extension of Temporary 15% Increase in Exchange Billings to Members

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1981, the Boston Stock Exchange, Inc., filed with the Securities and Exchange Commission the proposed change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On May 5, 1981, approval was granted by the Securities and Exchange Commission to allow the Exchange to impose a temporary 15% increase on all Exchange billings to members effective

for the period May 1, 1981 through September 30, 1981. Approval was subsequently granted to extend the increase through December 31, 1981. It is now proposed to continue the temporary 15% increase through March 31, 1982.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places set forth in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Basis for, the Proposed Rule Change

(a) The 15% increase on all Exchange billings to members was previously approved for the period May 1 through September 30, 1981 and subsequently extended through December 31, 1981. This increase was necessitated by increased costs in communications, data processing, leasehold and personnel expenses. The Committee appointed to complete a detailed study of all income and expenses of the Exchange has not completed its recommendations. The Board of Governors voted to extend the 15% increase through March 31, 1982.

(b) The basis under the Act for the proposed rule change is Section 6(b)(4) requiring the rules of an exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by adoption of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed change that are filed with the Commission, and all written communications relating to the proposed change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 6, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Transfer agent fee	Deposit surcharge	Withdrawal-by-transfer (WT) surcharge	Urgent certificate-on-demand (COD) surcharge
\$3.50 or less per certificate.	[\$1.25] \$2.15	[\$4.25] \$4.90	[\$5.10] \$7.55
More than \$3.50 per certificate.	[\$3.10] \$4.30	[\$8.50] \$9.25	[\$11.20] \$14.15

The surcharges for services in securities issues which carry transfer agent fees were originally filed on Form 19b-4A, File No. SR-DTC-78-15 and were revised on Form 19b-4A, File No. SR-DTC-79-4 and Form 19b-4A, File No. SR-DTC-80-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the

Dated: December 10, 1981.

George A. Fitzsimmons,
Secretary.

[PR Doc. 81-35946 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18328; File No. SR-DTC-81-5]

Self-Regulatory Organizations; Proposed Rule Change By Depository Trust Co. Relating to Surcharges for Services in Securities Issues With Transfer Agents Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 8, 1981, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves surcharges for services in securities issues which carry transfer agent fees:

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to pass along to Participants with activity in securities issues which carry transfer agent fees the costs incurred by The Depository Trust Company (DTC) because of such fees. The transfer agent fees are not imposed by DTC for services rendered to Participants and therefore such fees are not contained in the Fee Schedule for Major Services.

The proposed rule change relates to DTC's carrying out the purposes of

Section 17A of the Securities Exchange Act of 1934 (the Act) by equitably allocating charges other than dues or fees among DTC participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no burden on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not to be solicited from Participants. All Participants have been notified of Proposed surcharges by a DTC Important Notice (Exhibit 2 to DTC's filing on Form 19b-4A, SR-DTC-81-5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 6, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 11, 1981.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-35947 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18327; File No. SR-NSSC-81-16]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corp.; Relating to a Revision to National Securities Clearing Corporation's (NSCC) Rate Structure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1981, the National Securities Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the National Securities Clearing Corporation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Attachment A, is NSCC's revised fee structure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise NSCC's rate structure to insure that NSCC's fees for each product group continue to bear a close relationship to the underlying processing costs for each product group. This revision is necessitated due to volume and processing procedural changes that have occurred since

NSCC's Consolidated Rate Structure became effective in 1978. The proposed rule change also complies with the Commission's Order (see Release No. 34-17562, February 20, 1981) directing NSCC to submit a new fee schedule.

The revised rate structure will result in the following changes to the fee schedule:

1. New fees and increases to existing fees will be instituted relating primarily to physical handling and preparation items performed by NSCC for certain participants.
2. The Branch Surcharge on Listed Processing will be eliminated.
3. A minimum and maximum transaction charge will be instituted for Stock Trade Comparison and Recording activities.
4. Additional Trade Correction fees will be introduced to encourage early and accurate submissions.
5. A fee will be imposed on State Transfer Tax Processing.
6. The differences in prices between National Transfer Service In-Town and Out-Of-Town Transfers will be eliminated.
7. The discount will no longer be applied equally to all services but will be applied on multiple levels.

The proposed changes to NSCC's rate structure are consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder applicable to the self-regulatory organization in that they allow for the equitable allocation of fees and other charges among NSCC's Participants.

Inasmuch as the proposed rule change relates only to NSCC's rate structure, it does not affect the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were solicited from Participants pursuant to an Important Notice dated August 4, 1981, which Notice is attached as Exhibit 2. Out of more than 350 Participants, three chose to comment in writing. Additionally, SIAC, NSCC's facilities manager, also chose to comment in writing.

Two of the three Participants were basically concerned with the impact upon their firms of the revised fees. Comparative rate analyses were provided to both firms. In one case, the analysis indicated that the revised fees would have no significant impact and in the other case it indicated that the revised fees would have resulted in a decrease in fees. The third Participant was also concerned with the impact upon his firm but focused specifically on the options fee. He suggested that this fee be based upon volume rather than usage. NSCC explained that regardless of volume, options processing is labor intensive and that a usage fee would be more appropriate to recover costs than a fee based upon volume.

SIAC suggested that NSCC bill advisory and QT fees only to Participants with error rates in excess of an acceptable level and that NSCC should substantially increase these fees in order that Participants have an incentive to reduce their uncomparable rates. NSCC advised that the trade correction fees were being raised by approximately 440% and that one of the reasons for such increase was to encourage prompt and correct trade submission. However, NSCC also advised that the rate structure is premised on cost justification thus, each Participant must be billed for the cost of each transaction processed by NSCC and a further fee increase is not warranted at this time.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 6, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 11, 1981.

George A. Fitzsimmons,
Secretary.

Attachment A.—National Securities Clearing Corporation Fee Structure

I. *Trade Comparison and Recording Service Fees*—represents the fees to enter and correct original trade data.

A. Trade Comparison:

1. Each side of each stock, warrant or right trade submitted—\$.033 per 100 shares, with a minimum fee of \$.066 and a maximum fee of \$1.65 being applicable.

2. Each side of each bond trade submitted—\$.30 per side.

B. Trade Correction Fees:¹

1. Stamped Advisory submitted on:
 - a. T+2—\$.20 per stamped advisory.
 - b. T+3—\$.35 per stamped advisory.
2. Trades Deleted—\$.20 both sides.
3. Add by Seller—\$.20 both sides.
4. QT (Questioned Trade) and DK (Don't Know) input by non-originating party:
 - a. T+3—\$.35 per QT/DK.
 - b. T+N—\$.50 per QT/DK.
5. All other input after T+1 (CHC, As Of, Demand As Of, Withhold, Demand Withhold):
 - a. T+2—\$.20 per side.
 - b. T+3—\$.35 per side.
 - c. T+N—\$.50 per side.
6. Demand Advisories:
 - a. DKed (Don't Know) or Rejected:
 - (1) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.
 - (2) Response on the day after the Demand Advisory appears on the contract sheets (Day 2)—\$.35 to the responder.
 - (3) Response on the second day after the Demand Advisory appears on the contract sheets (Day 3)—\$.75 to the responder.
 - b. Accepted (Stamped):
 - (1) Response on Day 1—\$.20 to the responder.
 - (2) Response on Day 2—\$.35 to the responder.
 - (3) Response on Day 3—\$.75 to the responder.

1. Multiple receipts made in a depository during a daily period due to partial delivery procedures as a result of timing differences will be considered as a single receipt and counted on a per-issue basis.

2. A designated valued delivery is an instruction from a Special Representative to CNS to transfer a valued position from one NSCC participant to another participant or to a non-participant through a clearing interface.

3. A security order, or non-CNS settling item, is an instruction to deliver or receive securities outside of the CNS system. These instructions will be generated when cleared securities are not eligible for CNS or when both parties to a transaction wish to settle in this manner. Security orders may be issued on an item-by-item basis or netted through "balance order" procedures.

4. At the present, New York City only.

5. Trade Correction Fees will be applied in addition to the fees charged in I.A. above.

c. Automatic Acceptance (No Response by Day 3)—\$.40 to the participant that failed to respond.

C. Trade recording fees will be charged as follows on those items originally compared by other parties, but cleared through NSCC:

1. Each side of each stock, warrant or right item entered for settlement, but not compared by NSCC—\$.02 per 100 shares, with a minimum fee of \$.04 and a maximum fee of \$1.00 being applicable.

2. Each side of each bond item entered for settlement, but not compared by NSCC—\$.18 per side.

D. Paper Input:

1. Each item submitted in paper form where alternate machine readable input systems do not exist (includes trade input after T+1)—\$.12 per item.

2. Each item submitted in paper form where alternate machine readable input systems exist (includes T+1 trade input)—\$.25 per item.

II. *Trade Clearance Fees*—represents fees for netting, issuance of instructions to receive or deliver and effecting book-entry deliveries.

A. Receipts from CNS to satisfy a long valued position²—\$.45 per issue received.

B. Deliveries to CNS in the night processing cycle to cover a short valued position—\$.45 per delivery.

C. Deliveries to CNS in the day processing cycle to cover a short valued position—\$.20 per delivery.

D. Designated valued deliveries³ (transaction processing) entered to the clearance system through special representative procedures—\$.15 per side.

E. Security orders generated⁴—\$.25 per item.

F. Buy-Ins submitted—\$.50 per item.

G. Clearing Interface Exemption or Inclusion Instruction to NSCC—\$.75 per item.

H. Paper Input:

1. Each item submitted in paper form where alternate machine readable input systems do not exist (includes buy-ins, interface exemptions and interface inclusions)—\$.12 per item.

2. Each item submitted in paper form where alternate machine readable input systems exist (includes CNS exemptions and priorities)—\$.25 per item.

III. Delivery Service Fees:

A. Envelope Settlement System:

1. Intra-City Deliveries (ESS):⁵ Night Zone Up to 9:15 a.m.—\$.35 per envelope.

6. Multiple receipts made in a depository during a daily period due to partial delivery procedures as a result of timing differences will be considered as a single receipt and counted on a per-issue basis.

7. A designated valued delivery is an instruction from a Special Representative to CNS to transfer a valued position from one NSCC participant to another participant or to a non-participant through a clearing interface.

8. A security order, or non-CNS settling item, is an instruction to deliver or receive securities outside of the CNS system. These instructions will be generated when cleared securities are not eligible for CNS or when both parties to a transaction wish to settle in this manner. Security orders may be issued on an item-by-item basis or netted through "balance order" procedures.

9. At the present, New York City only.

Early a.m. Zone 9:16 a.m. to 11:00 a.m.—\$50 per envelope.*

Late a.m. Zone 11:01 a.m. to 11:30 a.m.—\$1.00 per envelope.

Reclamations 11:31 a.m. to 2:00 p.m.—\$35 per envelope.

2. Inter-City Deliveries (IESS)—\$1.75 per envelope.

3. Receives—\$35 per envelope.

B. National Transfer Service (NTS)—\$55 per envelope.

C. Dividend Settlement Service (DSS)—\$15 per item.

D. New York State Transfer Taxes—\$20 per item.

E. Each item submitted in paper form where alternate machine readable input systems do not exist (includes New York State Transfer Taxes and dividend settlement input)—\$12 per item.

IV. Other Service Fees:

A. Correspondent Delivery and Collection Service (CDCS)⁸—\$9.00 per envelope plus pass-through cost to reach locations outside of immediate local delivery areas.

B. Receive—Physical:⁹

1. Without collection (at other than primary receive location)—\$9.00 per item.

2. Against payment—\$4.90 per item.

C. Order-Outs from Clearing:⁹

1. Delivery to participant at primary receive location—\$5.40 per item.

2. Delivery to participant at location other than primary receive location—\$6.30 per item.

3. Collection at other than primary receive location—\$9.00 per item plus cost of delivery service (ESS, IESS or CDCS).

D. Deposits to Clearing—\$4.50 per item.

E. Underwriting Pick-Up—\$22.50 per pick-up.

F. Customer Transfer in which the participant instructs NSCC to physically act on their behalf:⁹

1. Regular—\$2.70 per item.

2. Legal—\$5.40 per item.

3. Rush—\$5.40 per item plus pass-through of any direct charges.

G. Remote Trade Comparison Handling in which the participant instructs NSCC to perform the local P&S function on behalf of the participant¹⁰—\$5.00 per reported side.

H. Options Processing Fees in which the participant instructs NSCC to act on their behalf:¹¹

1. Remote trade comparison handling (P&S)—\$6.00 per reported side.

2. Exercise processed for the participant—\$8.75 per item.

3. Exercise by exception processed for the participant—\$2.25 per item.

4. Assignment processed for the participant—\$2.25 per item.

I. Depository Handling Fees in which the NSCC participant instructs NSCC to act on their behalf:

1. Each physical item withdrawn from a participant's account in a depository by NSCC at the participant's request:

a. Withdrawn by order-out for pick-up at primary receive location—\$9.00 per item.

b. Withdrawn by order-out for pick-up at other branch location—\$1.60 per item.

c. Withdrawn by order-out for delivery through a delivery service—\$4.50 per item plus cost of delivery service (ESS, IESS or CDCS).

d. Withdrawn by transfer for pick-up at primary receive location—\$6.50 per item.

e. Withdrawn by transfer (abbreviated service, i.e., not including verification of registration and resubmission of erroneous items)—\$4.50 per item.

f. Withdrawn by transfer for pick-up at other than primary receive location—\$1.55 per item.

2. Each physical item deposited by NSCC to a participant's account in a depository for credit to the participant in the depository's day cycle processing for the next business day—\$4.50 per item.

3. Each manual instruction submitted to a depository by NSCC for a participant:

a. Pledge, release—\$9.00 per item.

b. Book-entry movement, etc.—\$4.50 per item.

J. Preparation Fees:

1. Preparing DTC forms for deposits, CODs, DOs—\$1.60 per item.

2. Preparing securities for delivery through a delivery service (ESS, IESS, CDCS)—\$3.60 per item plus cost of delivery service (ESS, IESS or CDCS).¹²

3. Preparing securities for physical transfer, physical collateral loan or drafting—\$3.60 per item.

K. Reorganizations—\$10.00 per item.

L. Security Master File—\$45.00 per tape as requested by participant.

M. Each item submitted in paper form where alternate machine readable input systems do not exist (includes P&S trade input and cage movements)—\$12 per item.

V. Pass-Through and Other Fees:

A. Participant Fees—represents the monthly fee for participation in one or more of the specified services provided by NSCC. The five services and their related base fees are:

1. Trade Processing System—\$1.00 per side for the first 100 sides compared per month.¹³

2. Envelope Settlement System (ESS and IESS)—\$50.00 per month.

3. Correspondent Delivery and Collection Service (CDCS)—\$50.00 per month.

¹³The stated prices for IV.C.3 and IV.I.1.c. include security preparation fees.

¹²The first 100 sides per month is based on total sides compared by NSCC, sides compared by other parties and forwarded to NSCC for settlement, and sides entered by special representatives through transaction processing procedures (see II.D above). It includes both stock and bond transactions and is applicable to sides settled through CNS, security order or interface processing.

4. National Transfer Service (NTS)—\$50.00 per month.

5. Dividend Settlement Service (DSS)—\$50.00 per month.

The maximum cumulative charge for items 1 through 5—\$150.00 per month.

B. Special Service Fees:

1. Commission Billing:

a. Debit—\$15 per item.

b. Credit—\$10 per item.

2. Options cage processing (daily settlement)—\$300.00 per month.

3. DTC Sponsored Accounts—available to each NSCC/CNS participant who is not also a participant of DTC:

For each item delivered or received through DTC—\$75 per item plus the pass-through of all normal DTC billings assessed the sponsored account, with the exception of the monthly DTC participant fee.

Maximum charge for delivered or received items—\$350.00 per month.

4. For each broker/dealer on whose behalf participants have indicated they will act as provided in NSCC Rule 3, Section 4—\$5.00 per month.

5. Machine readable output fees:

a. Tape Output—\$100.00 per month per tape plus \$20.00 per month for each additional firm on a tape after the first.

b. Card Output—3¢ per card with a maximum of \$200.00 per month for each type of output selected by a participant.

c. Service Bureau Tapes—Cost prorated.

d. Magnetic Tapes not returned—\$10.00 per reel after 30 days.

6. Microfiche Reports—\$3.00 per fiche.

7. Communications Services—ADP

Terminal—\$0.05 per line keypunched.

8. Special Research—\$11.00 per hour.

9. Processing cash or stock dividend claims made against the Corporation's NCC & Co. nominee by NSCC participants and others—\$10.00 per record date claim.

10. Depository Handling Fees in which the participant requests NSCC to receive and submit transactions to DTC on a Bag-In and Bag-Out basis—\$25.00 per month for each type of DTC transaction handled.

C. Pass-Through Expenses:

1. Transportation and Insurance:

a. Physical handling and envelope delivery service outside of New York City—Fees imposed (if any) by Bank receiving agent on valued deliveries and cost of transporting securities.

b. Identifiable insurance costs, if any, incurred in shipping securities between NSCC branch offices—Cost.

2. Communications Services:

a. Telephone—Cost + Overhead.

b. Mohawk—Cost.

3. Forms—Cost + Handling.

4. Certificate Fees incurred by NSCC to process transfers—Cost.

5. Postage costs incurred by NSCC—Cost.

VI. Regulatory Charges:

For those members of NYSE, ASE or NASD, their pro-rata share, on a monthly basis, of regulatory fees assessed by NYSE, ASE or NASD. Proration will be based on the value of deliveries or receipts made through CNS and the value of security orders produced. Positions cleared through special representative or interface procedures will be

*Includes all physical deliveries, redeliveries and reclamations made outside of the envelope settlement system.

¹Under instructions, NSCC will receive securities from third parties, at NSCC offices.

²Participants will be able to deposit or order-out securities directly to or from their account in CNS. Activities handled in this manner will not be recorded in the participant's account on depository records and thus depository fees will not be assessed. Generally, however, these movements will be against valued positions and if so, clearance fees (ILA or B.) will be applied.

³For transfers handled outside of the depository system (see IV.I.(d), (e) and (f) for depository transfers).

⁴NYSE odd-lots are excluded from this charge.

⁵See also V.B.2. Options Cage Processing Fee.

considered as delivered or received. Deliveries and receipts, or portions thereof, that are the result of trading in other markets (including exercises and assignments of options) will be excluded. A minimum level of regulatory charges will be assessed at \$.04 per side.

Application of Fees

With the exception of certain registered clearing agencies, all fees will be charged uniformly to all participants and collected through the settlement system if possible. Charges will not be made to registered clearing agencies for inter-clearing corporation OTC trade comparison if the agency provides its own intra-clearing corporation OTC trade comparison, or for interface processing. Fees for other standard services provided to registered clearing agencies will be the same as those charged to other participants. Special services performed for other registered clearing agencies such as intra-clearing corporation OTC trade comparison, sharing of branches, CDCS handling, etc., will be contracted on an individual basis.

[FR Doc. 81-35948 Filed 12-15-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2019]

Massachusetts; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the City of Lynn in Essex County, Massachusetts, constitutes a disaster loan area because of damage resulting from a fire beginning on November 28, 1981. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on February 1, 1982, and for economic injury until September 3, 1982, at: Small Business Administration, District Office, 150 Causeway Street, 10th Floor, Boston, Massachusetts 02114, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

- Homeowners with credit available elsewhere, 16%.
- Homeowners without credit available elsewhere, 8%.
- Businesses with credit available elsewhere, 15%.
- Businesses without credit available elsewhere, 8%.
- Businesses (EIDL) without credit available elsewhere, 8%.

Information on recent regulatory changes (P.L. 97-35, approved August 13, 1981) is available at the above-mentioned offices.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

December 8, 1981.

Michael Cardenas,
Administrator.

[FR Doc. 81-35922 Filed 12-15-81; 8:45 am]

BILLING CODE 8025-01-M-M

[Declaration of Disaster Loan Area #2018]

Texas; Declaration of Disaster Loan Area

Somervell County in the State of Texas constitutes a disaster area as a result of damage caused by flooding which occurred on October 12-17, 1981. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on February 8, 1982, and for economic injury until September 9, 1982, at the address below:

SBAS District Office, 1100 Commerce Street, Room 3036, Dallas, Texas 75242

SBA Branch Office, 501 West 10th Street, Room 527, Ft. Worth, Texas 76102

or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

- Homeowners with credit available elsewhere, 16%.
- Homeowners without credit available elsewhere, 8%.
- Businesses with credit available elsewhere, 18%.
- Businesses without credit available elsewhere, 8%.
- Businesses (EIDL) without credit available elsewhere, 8%.

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Public Law 96-302.

Information on recent regulatory changes (P.L. 97-35, approved August 13, 1981) is available at the above-mentioned offices.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: December 9, 1981.

Michael Cardenas,
Administrator.

[FR Doc. 81-35922 Filed 12-15-81; 8:45 am]

BILLING CODE 8025-01-M

[SBLC No. 01/B-0026]

Creative Credit Services, Inc.; Filing Eligibility Determination as Small Business Lending Company

An application for Eligibility Determination as a Small Business Lending Company has been filed by Creative Credit Services, Inc.

(Applicant), 260 Long Ridge Road, Stamford, Connecticut 06902, with the Small Business Administration pursuant to Section (1981)), promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged solely in the making of loans to small business concerns in participation with SBA, and in accordance with applicable SBA Regulations. It will be subject to supervision and examination by the SBA.

The applicant is incorporated under the laws of the State of Delaware and will commence operation with a minimum capitalization of \$5,005,000.

General Electric Credit Corporation, 570 Lexington Avenue, New York, New York 10022, the parent and sole owner of Applicant's outstanding common stock, is in turn wholly owned by General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431.

The Applicant intends to conduct its operations on a nationwide basis through seven (7) regional offices and to sell in the Secondary Market the SBA's guaranteed portion of loans made to small business concerns.

The Officers and Directors of the Applicant are:

Name, title and address

Bernard P. Long, Director, Chairman of Board, 7 Nearwater Lane, Riverside, Conn.

David D. Ekedahl, Director, President, 68 Hannah's Road, Stamford, Conn.

Robert I. Reich, Director, 15 Brookwood Lane, Stamford, Conn.

Richard P. Palmieri, Director, Vice President-Marketing, 273 Martling Ave., Tarrytown, N.Y.

James C. Warren, Director, Vice President-Operations, 703 Hope St., Stamford, Conn.

John R. Meehan, Vice President-Financial Analysis & Planning, 20 Mapletree Ct. Stamford, Conn.

Allen G. Thompson, Vice President, 1391 Deborah Dr., Santa Ana, Calif.

David P. Francis, Vice President, 18 Surrey Glen, Wilton, Conn.

James R. Bunt, Vice President, Comptroller, 57 Hickok Road, New Canaan, Conn.

Leo A. Halloran, Vice President-Finance, 477 Thayer Rd., Wilton, Conn.

Raymond W. Martin, Vice President-Taxes, 26 Slawson Ct., Wilton, Conn.

John A. Mottalini, Secretary, 8 Harding Drive, Ridgefield, Conn.

David B. Greenwood, Treasurer, Troy Lane, Bedford, N.Y.

Barry S. Goodkin, Assistant

Treasurer-State Taxes, 5
Wedgewood Road, Trumbull, Conn.

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, not later than January 15, 1982, submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to: Wayne S. Foren, Director, Office of Lender Relations & Certification, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Stamford, Connecticut, as well as in the four (4) regional editions of *The Wall Street Journal*, serving the area of operations of the Applicant.

(Catalogue of Federal Domestic Assistance Program No. 59.012 Small Business Loans)

Dated: December 9, 1981.

Edwin T. Holloway,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 81-35921 Filed 12-15-81; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0405]

Unicorn Ventures, Ltd.; Issuance of a Small Business Investment Company License

On July 8, 1981, a notice was published in the *Federal Register* (46 FR 35402) stating that an application has been filed by Unicorn Ventures, Ltd., 14 Commerce Drive, Cranford, New Jersey 07016, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)) for a license as a small business investment company.

Interested parties were given until close of business July 23, 1981, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0405 to Unicorn Ventures, Ltd. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 9, 1981.

Edwin T. Holloway,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 81-35924 Filed 12-15-81; 8:45 am]

BILLING CODE 8025-01-M

White River Capital Corp.; Application for License To Operate as a Small Business Investment Company (SBIC)

[Application No. 05/05-0165]

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)), under the name of White River Capital Corporation, 500 Washington Street, Columbus, Indiana 47201, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et seq.), and the rules and regulations promulgated thereunder.

The proposed officers, directors and shareholders of the Applicant are as follows:

Name and address	Title and relationship	Percent of ownership
John H. Cragoe, 500 Washington Street, Columbus, Indiana 47201.	President, Director.	0
George H. Groves, 500 Washington Street, Columbus, Indiana 47201.	Executive Vice President, Secretary/Treasurer, Director.	0
John Nash, 500 Washington Street, Columbus, Indiana 47201.	Director.	0
J. Irwin Miller, 500 Washington Street, Columbus, Indiana 47201.	Director.	0
Clementine Tangeman, 500 Washington Street, Columbus, Indiana 47201.	Director.	0
Irwin Union Corporation, 500 Washington Street, Columbus, Indiana 47201.	Parent Company.	100

Irwin Union Corporation is a one-bank holding company that has consolidated assets of approximately \$248 million. Irwin Union Corporation has four other subsidiaries that deal in bank related matters.

The Applicant will conduct its operations in the State of Indiana.

The Applicant will begin operations with \$850,000 of private capital derived from the sale of 500 shares to Irwin Union Corporation.

Matters involved in SBA's consideration of the application include the general business reputation and

character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, on or before December 31, 1981 submit written comments on the proposed company to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Columbus, Indiana.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 10, 1981.

Edwin T. Holloway,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 81-35908 Filed 12-15-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Bureau of Government Financial Operations, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal cash management operations.

SUMMARY: This notice provides the percentage rate based on the current value of funds to the Treasury. This rate is required by the Treasury Fiscal Requirements Manual (I TFRM 6-8000) to be used in Federal billing, collection, and disbursement operations and is provided here as public notice to assist agencies in their negotiations with affected contractors, organizations, and individuals. The applicable rate is 14.39%.

DATES: The rate will be in effect for the period beginning on January 1, 1982 and ending on March 31, 1982.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Regulations and Compliance Staff, Bureau of Government Financial Operations, Department of the Treasury, Treasury Annex No. 1, Washington, D.C. 20226 (Telephone: 202/566-8251).

SUPPLEMENTARY INFORMATION: Revisions to I TFRM 6-8000 in June 1980, provided that the current value of funds rate would be used in assessing charges

for late payments to the Government (except where prohibited by law or where a different rule is prescribed by statute), and in determining whether it is cost-effective for the Government to avail itself of prompt payment discounts. This rate reflects the short-term value of funds to the Treasury and is based on rates set for purposes of Pub. L. 95-147, 91 Stat. 1227. It should be noted that the Federal Claims Collection Standards (4 CFR 102.11) also require that interest be charged on delinquent debts and debts being paid in installments in accordance with 1 TFRM 6-8000.

Dated: December 11, 1981.

Irwin Faunce,

Acting Commissioner.

[FR Doc. 81-35005 Filed 12-15-81; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register

Vol. 46, No. 241

Wednesday, December 16, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

Contents

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1

COMMODITY CREDIT CORPORATION

Agency Meetings

Pursuant to provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Commodity Credit Corporation Board of Directors met in the following closed executive sessions to consider certain market sensitive commodity policies:

11:55 a.m., Wednesday, November 25, 1981
4:30 p.m., Friday, December 1, 1981
4:55 p.m., Wednesday, December 9, 1981

The General Counsel certified that each meeting could be closed to the public pursuant to the exemptions set forth in 5 U.S.C. 522b(c)(9) and 7 CFR 1409.4(a)(9).

Edward D. Hews, Secretary,
Commodity Credit Corporation, Room 3088, South Building, Department of Agriculture, Washington, DC 20013; telephone (202) 447-7583.

[S-1877-81 Filed 12-14-81; 12:33 pm]

BILLING CODE 3410-05-M

2

COMMODITY CREDIT CORPORATION

TIME AND DATE: 3 p.m., December 21, 1981.

PLACE: Room 104, Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of November 16, 1981; November 25, 1981; December 1, 1981; and December 9, 1981.

2. Docket WCX-213 re: Food Security Wheat Reserve.

3. Memorandum re: CCC Financial Update.

CONTACT PERSON FOR MORE

INFORMATION: Edward D. Hews, Secretary, Commodity Credit Corporation, Room 3088, South Building, Department of Agriculture, Washington, D.C. 20013; telephone (202) 447-7583.

[S-1879-81 Filed 12-14-81; 2:23 pm]

BILLING CODE 3410-05-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, December 21, 1981, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Requests for relief from adjustment for violations of Regulation Z:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Applications for Federal deposit insurance:

Summit Bank, a proposed new bank, to be located at 2969 Broadway, Oakland, California.

Dedham Institution for Savings, Dedham, Massachusetts, an operating noninsured bank.

Golden West Bank, a proposed new bank, to be located at 1609 North State Street, Orem, Utah.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,980-L—International City Bank and Trust Company, New Orleans, Louisiana

Case No. 45,008-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room of the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: December 14, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[S-1861-81 Filed 12-14-81; 4:07 pm]

BILLING CODE 8714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION**Agency Meeting**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, December 21, 1981, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Bank of Powell, a proposed new bank, to be located at 104 East Main Street, Powell, Alabama.

Republic Bank & Trust Company, an inactive noninsured bank, to be located at 2897 Bardstown Road, Louisville, Kentucky.

Bristol County Savings Bank, Taunton, Massachusetts an operating noninsured mutual savings bank.

Application for Federal deposit insurance and for consent to exercise full trust powers:

The Washington Trust Company of Westerly, Westerly, Rhode Island, an operating noninsured bank.

Application for consent to establish a branch:

The Peoples Bank, Carrollton, Georgia, for consent to establish a branch at 1090 North Park Street, Carrollton, Georgia.

Application for consent to move a branch:

The Bowery Savings Bank, New York (Manhattan), New York, for consent to move a branch office from 1011 Third Avenue to 1010 Third Avenue, both addresses within New York (Manhattan), New York.

Application for consent to acquire assets and assume liabilities and to establish one branch:

The State Bank, Fort Dodge, Iowa, for consent to acquire the assets of and assume the liability to pay deposits made in Iowa State Bank and Trust Company, Dayton, Iowa, and to establish the sole office of Iowa State Bank and Trust Company as a branch of The State Bank.

Request for exemption pursuant to section 348.4(b)(3) of the Corporation's rules and regulations entitled "Management Official Interlocks":

First Security Bank of Glendale Heights, Glendale Heights, Illinois, and First

Security bank of Glen Ellyn, Glen Ellyn, Illinois.

Memorandum and Resolution re: Final amendments to Part 308 of the Corporation's rules and regulations, entitled "Rules of Practice Procedures," which would (1) implement the Equal Access to Justice Act, (2) enhance agency responsiveness and capability in the conduct of administrative proceedings by delegating certain responsibilities to the Corporation's Executive Secretary and by correcting certain procedural impediments to efficient operation, and (3) establish procedures and set standards for petitions for reconsideration of denials of requests submitted pursuant to section 19 of the Federal Deposit Insurance Act.

Appeal from an initial denial of a request for records pursuant to the Freedom of Information Act.

Memorandum re: Budget of Administrative Expenses for Budget Year 1982.

Memorandum re: Budget of Liquidation Expenses for Budget Year 1982.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and Resolution re: Recommended Definition of Bank Capital to be Used in Determining Capital Adequacy.

Memorandum and Resolution re: Mandatory Accrual Accounting Guidelines for Commercial Banks and Mutual Savings Banks.

Memorandum re: Renewal of lease for office space in the building located at 1709-11 New York Avenue, N.W., Washington, D.C.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: December 14, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[S-1082-81 Filed 12-14-81; 4:07 pm]

BILLING CODE 6714-01-M

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FEDERAL ENERGY REGULATION COMMISSION

December 11, 1981.

TIME AND DATE: 2 p.m., December 15, 1981.

PLACE: Room 9306, 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *PERC v. Grace Petroleum Corp., et al.*, D.C. Civil Action No. 81-0133 and Docket No. IN79-7.

CONTRACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; Telephone (202) 357-8400.

The following members of the Commission voted that agency business requires the holding of a closed meeting on less than the seven days' notice required by the Government in the Sunshine Act:

Kenneth F. Plumb,
Secretary.

[S-1076-81 Filed 12-14-81; 12:33 pm]

BILLING CODE 6717-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION

December 11, 1981.

TIME AND DATE: 10 a.m., December 18, 1981.

PLACE: Room 9306, 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) *Florida Power & Light Co. v. FERC*, 5th Cir. No. 80-5259 and *Florida Power & Light Co.*, Docket No. ER77-175.

(2) *The Process Gas consumers Group, et al. v. U.S. Department of Agriculture, et al.*, D.C. Cir. No. 79-1336, *et al.*

(3) *Inexco Oil Co.*, Docket No. CI81-14.

(4) *Texas Sea Rim Pipeline Co., Inc., et al.*, Docket No. IN80-10.

(5) *Northern Natural Gas Co.*, Docket No. CP81-236-001.

(6) *Transwestern Coal Gasification Co., et al.*, Docket No. CP73-212.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; Telephone (202) 357-8400.

Kenneth F. Plumb,
Secretary.

[S-1076-81 Filed 12-14-81; 12:33 pm]

BILLING CODE 6717-01-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Week of December 14, 1981 (revised) and week of December 21, 1981.

PLACE: Commissioners Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:*Tuesday, December 15*

- 1:30 p.m.: Briefing by Executive Branch (approximately 1 hour) (closed meeting)
- 2:30 p.m.: Discussion of Export Licensing Policy (closed meeting) (as announced; time changed)

Wednesday, December 16

- 10:30 a.m.: Oral Presentations and Possible Vote on Clinch River Breeder Reactor (public meeting) (postponed from December 11)
- 2:00 p.m.: Discussing of Policy and Planning Guidance (public meeting) (tentative) (as announced)

Thursday, December 17

- 3:00 p.m.: Affirmation/Discussion Session (public meeting). Items to be affirmed and/or discussed:
- a. Final Rule on Intransit Physical Protection of Special Nuclear Material of Moderate Strategic Significance (postponed from December 10)

- b. Proposed Amendment to 10 CFR Part 50, Appendix E, Frequency of Emergency Preparedness Exercises (tentative)
- c. Final Amendments: (A) to 10 CFR Part 50, Appendix E, Delaying Implementation Date for Prompt Notification Systems, (B) to 10 CFR 50.54(s)(2), Clarifying Four-Month Extension
- d. Issuance of Notice of Hearing in Civil Penalty Action

Monday, December 21

- 9:30 a.m.: Discussion of Information Flow During TMI Accident (approximately 1 hour) (public meeting)
- 10:30 a.m.: Staff Briefing on TMI-1 Restart (approximately 1 hour) (public meeting)
- 11:30 a.m.: Briefing on Contested Matters in TMI-1 Restart Proceeding (closed meeting)
- 2:00 p.m.: Discussion of Operational Data Evaluation (public meeting)

Tuesday, December 22

- 10:00 a.m.: Briefing on Status and Plan for Severe Accident Rulemaking (public meeting)
- 3:00 p.m.: Affirmation/Discussion Session (public meeting). Items to be affirmed and/or discussed:
- a. Revised General Statement of Policy and Procedure for Enforcement Actions
- b. Proposed Rulemaking, "Environmental Qualification of Electric Equipment for Nuclear Power Plants"
- c. Final Rule for Pending CP/ML Applications

- d. Export and Import of Nuclear Equipment and Material: Proposed Amendments to NRC's Regulations
- e. Proposed Rule Change on Technical Specifications
- f. Review of Order Concerning Sua Sponte Issues (in the Matter of Texas Utilities Generating Company, et al.)

ADDITIONAL INFORMATION: Discussion of Congressional Testimony, scheduled for December 10, was cancelled. Affirmation of Review of Director's Decision on 2.206 Petition (Florida Power and Light Company), scheduled for December 10, was cancelled. Discussion of FY 83 Budget, also scheduled for December 10, was cancelled.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

December 10, 1981.

Walter Magee,

Office of the Secretary.

[S-1060-01 Filed 12-14-81; 6:45 am]

BILLING CODE 7590-01-M

Federal Register

Wednesday
December 16, 1981

Part II

Department of the Interior

Bureau of Land Management

Proposed Amendments to Coal Management Program Regulations

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3410, 3420, 3430, 3440, 3450, 3460 and 3470

Coal Management; Federally Owned Coal; Amendments to Coal Management Program Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would eliminate burdensome, outdated and unneeded provisions of the existing coal management regulations. The proposed specific amendments to the existing regulations resulted from public comments requested by the Secretary of the Interior and from an extensive review of the coal management program by the Bureau of Land Management and Department of the Interior personnel.

DATE: Comments by February 16, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular working hours (7:45 a.m. to 4:15 p.m.) on regular business days.

FOR FURTHER INFORMATION CONTACT:

Monte Jordan, (202) 343-4636, or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: In February 1981, as part of the effort to streamline the Department of the Interior regulations and reduce the burden imposed on the public by unneeded regulations, the Secretary of the Interior asked the public and agencies of the Department of the Interior to identify those regulations that were burdensome or counterproductive so they could be reviewed for revision or elimination. Many of the comments from the public identified areas of the coal management regulations in 43 CFR Group 3400 that were published in the *Federal Register* on July 19, 1979 (44 FR 42609), as needing revision or elimination. Additional recommendations were identified in the ongoing Department of the Interior review of the coal management program. This proposed rulemaking and the changes it would make in the coal management program reflect the public comments and the Department's review of the coal program, and indicate revised policies for some components of the program. The public comments submitted in response to the request by the Secretary of the Interior are

available for review as are the comments on the proposed rulemaking at the address set out above.

This proposed rulemaking has been coordinated with the proposed changes in Title 30 Code of Federal Regulations, Part 211, Coal Exploration and Mining Operations published elsewhere in this *Federal Register*. These two sets of proposed rules have been crossreferenced as part of a comprehensive revision of the Federal coal program.

Subpart 3400—Introduction—General

The proposed rulemaking would delete § 3400.0-4, Responsibilities, in its entirety. The section, which contains guidance for the various bureaus that participate in the management of Federal coal, is considered repetitive and unnecessary in that it repeats instructions and guidance furnished in other parts of the coal management program regulations and the regulations of the U.S. Geological Survey, Office of Surface Mining and Fish and Wildlife Service. This guidance is also set out in several memorandums of understanding among the agencies, including the Memorandum of Understanding, Bureau of Land Management—Geological Survey—Office of Surface Mining, Management of Federal Coal.

In § 3400.0-5, Definitions, several terms would be deleted, clarified or revised. One change would be a revision of the definition of the term "bypass coal" in paragraph (d). The amended definition would more appropriately related to an existing mining operation rather than to the administrative term "logical mining unit."

Another change would delete the word "nontransferable" from the definition of the term "certificate of bidding rights" in paragraph (f). The transferability or nontransferability of a certificate, along with the applicable standards, would be contained in the certificate itself as part of its terms and conditions. This change would allow a more effective market allocation of resources when, for instance, a certificate of bidding rights is granted in exchange for a coal lease for lands which the Secretary of the Interior determines are inappropriate for mining.

The term "coal resource economic value" in paragraph (h) would be deleted because the Department of the Interior's revised policy no longer requires determination of a coal resource economic value in the determination of fair market value and minimum acceptable bids for coal leases.

Paragraph (i) "commercial quantities," paragraph (j) "continued operation," and

paragraph (m) "diligent development" would be deleted from the existing regulations in 43 CFR Part 3400. The proposed revision of 30 CFR Part 211, Coal Exploration and Mining Operations rules cross-reference the Department of Energy rules proposed for diligence to be promulgated at 10 CFR Part 378. The authority to promulgate rules on diligence was transferred to the Department of Energy by the Organization Act of 1977 (42 U.S.C. 701 et seq.). The deletion of these provisions from these 43 CFR Part 3400 rules will not become effective until final rulemaking has been promulgated by the Department of Energy.

The definition of the term "contiguous" contained in paragraph (k) would be deleted in its entirety and addressed in 30 CFR 211.2.

The term "exploration" in paragraph (p), renumbered paragraph (k), would be amended to be identical to the proposed 30 CFR 211.2 rules, and would clarify that data are necessary concerning the strata below the coal deposits as well as the overburden and strata above the coal deposits.

The definition of the term "Federal lands" in paragraph (t), renumbered paragraph (o), would be amended to remove any doubt that the term includes Federally-owned surface estate as well as mineral or coal estate, regardless of what Federal agency manages the lands. In some instances, such as some lands under the administration of the U.S. Forest Service, the coal estate under Federally-owned surface is privately-owned.

The definition of the term "interest" in paragraph (v), renumbered paragraph (q), would be amended by the addition of language that would make it clear that interests held by stock ownership or stock control are excluded from this definition. However, attribution of acreage to stock ownership interests in leases is cross-referenced to § 3472.1-3(b) of these regulations.

Paragraph (w) that defines the term "intertract bidding competition" would be deleted. While the intertract bidding system has not been used, it is possible that an intertract sale procedure would be applied experimentally in a future regional coal lease sale. In any case, the Department of the Interior believes that the concept has been mischaracterized as a bidding system and is rather a sale procedure which can be used at the discretion of the authorized officer.

The definition of the term "known recoverable coal resource area" (KRCRA) in paragraph (x) would be deleted. Known recoverable coal resource areas had been established to

identify Federal lands with economically or potentially economically recoverable coal. It has been determined that land use planning and coal activity planning should not be restricted to these areas because potentially economic coal may exist beyond the boundaries of known recoverable coal areas. The delineation of an area as a known recoverable coal resource area is no longer needed in order to consider Federal coal lands for leasing through the Federal coal program.

The definition of the term "lease" in paragraph (y), renumbered paragraph (r), would be shortened and simplified by the deletion of unnecessary language.

The proposed rulemaking would amend the definition of the term "lease bond" in paragraph (z), renumbered paragraph (s), to clarify the extent of the coverage of a lease bond.

The definition of the term "logical mining unit" (LMU) in paragraph (cc), renumbered paragraph (v), would be revised to exclude the word "coal" from the phrase "area of coal land." This would eliminate the implication that all lands within a logical mining unit must be underlain by coal. The new language of the revised definition would make it clear that a logical mining unit is an area of lands that can be developed and mined for coal in an efficient, economical and orderly manner and may include some lands not underlain either by any coal, or by recoverable coal, as long as the entire area is part of an efficient mining unit. Additionally, the deletion of the language relating to whether the LMU was approved before or after August 4, 1976, as well as clarification of the 40-year time frame for reserve exhaustion after production of coal commences would conform these regulations to the Federal Coal Leasing Amendments Act. These changes would allow the operator more flexibility in mining operations.

The definition of the term "Logical Mining Unit reserves" in paragraph (dd), renumbered paragraph (w), would be revised and cross-referenced to the appropriate provisions of the proposed 30 CFR Part 211 regulations.

The term "maximum economic recovery" or "MER" defined in paragraph (ee), renumbered paragraph (x), would be revised to conform to the definition and provisions in the proposed 30 CFR Part 211 regulations.

The definition of the term "mining method evaluation" contained in paragraph (ff) would be deleted since this process is part of the maximum economic recovery determination.

The definition of the term "mining plan" in paragraph (hh), renumbered

paragraph (z), would be revised to refer to the proposed definition in 30 CFR 211.10(b). The revised definition in 30 CFR 211.10(b) would provide for a resource recovery and protection plan to be the 3-year submittal required by section 7(c) of the Mineral Leasing Act of 1920, as amended. A mining operation cannot commence without an approved resource recovery and protection plan as part of the mine permit application package which would also contain the reclamation plan required by the Surface Mining Control and Reclamation Act. The lease as well as the approved resource recovery and protection plan and reclamation plan would require compliance with all applicable laws and regulations.

The term "Mining Supervisor" in paragraph (ii), renumbered paragraph (aa), would be changed to reflect new Geological Survey organization.

The term "operator" in paragraph (kk), renumbered paragraph (cc), would be clarified to identify the licensee as a person authorized to act under an exploration license and not under a license to mine coal.

The term "participant" in paragraph (ll), would be deleted since use of the term in the regulations is clear without its having to be specifically defined.

The language in paragraph (mm), renumbered paragraph (dd), would be clarified to make the definition of "permit" more understandable.

The definition of the term "qualified surface owner" contained in paragraph (pp), renumbered paragraph (gg), would be amended to clarify that the person or persons owning majority stock in a corporation must meet all the other requirements of the definition to be considered a qualified surface owner.

Excess wording would be deleted from the definition of the term "Secretary" in paragraph (rr), renumbered paragraph (ii). The deleted words are not needed because the Secretary of the Interior's authority to delegate covers the situation.

The definition for "surface management agency" in paragraph (ww), renumbered paragraph (nn), would be amended to clarify Federal management jurisdiction of split estate coal lands.

The definition of the term "Surface Mining Officer" in paragraph (xx), renumbered paragraph (oo), would be revised to cross-reference the appropriate regulatory authority specified in 30 CFR Chapter VII.

Section 3400.1, regarding multiple development, would be amended to add a new paragraph (b) stating that the presence of other minerals or the issuance of other mineral leases would

not preclude the exploration, leasing or development of coal deposits in those same lands. This change would mean that the prospecting for, development of or production of other minerals would not preclude the granting of a coal exploration license, license to mine or lease, and that coal exploration and development would not preclude other mineral activities. For example, coal leasing and development can be compatible with oil and gas development in the same areas if there are suitable stipulations for simultaneous operations.

Section 3400.4, which concerns Federal-state governmental cooperation, would be reorganized, condensed and clarified to focus on the establishment and responsibilities of the Federal-state regional coal teams. The changes would not significantly alter the role of the regional coal teams. The teams would continue to perform their functions of guiding leasing efforts and serving as an overall forum for regional coal program issues. The language deleted from paragraphs (b) and (c) of § 3400.4 would be moved to Subpart 3420, Competitive Leasing, to be incorporated in the appropriate sequential stages of the regional coal activity planning process.

The first sentence of paragraph (e), renumbered paragraph (d), which states that public participation in the regional coal team proceedings is not limited to the designated representatives, is deleted. This sentence is unnecessary because the meetings of the regional coal teams are open to the public in accordance with the Federal Advisory Committee Act, and other representatives of Federal and State agencies may also participate as appropriate. Paragraph (e), renumbered paragraph (d), would also be amended to allow rather than require participation to be solicited from Federal and State agencies with special expertise. This change would provide flexibility in the extent of participation by agencies with special expertise, particularly from agencies outside the Department of the Interior, and would serve to reduce the number of regional coal team advisors and thereby increase team effectiveness.

Paragraph (f) would be renumbered paragraph (e), and a new paragraph (f) would be added to § 3400.4 that makes it clear that the regional coal teams function under the Bureau of Land Management's cooperative relations advisory committee provisions provided in 43 CFR Subpart 1784.

The proposed rulemaking would add a new § 3400.5 which authorizes the Bureau of Land Management to

establish coal production regions for the purpose of setting coal leasing levels and for other coal management purposes. This new section contains language from § 3420.3 of the existing regulations which has been substantially revised in this proposed rulemaking. The new section places the coal production region provisions in a more appropriate location in the regulations and makes the description of the leasing process more orderly and easier to understand.

Subpart 3410—Exploration Licenses

Subpart 3410, Exploration Licenses, would be amended to reduce the administrative burden involved in processing an application, including unnecessary consultation requirements and ground-water studies.

The deletion of § 3410.0-4, Responsibilities, from the existing regulations would be consistent with the earlier removal of § 3400.0-4. This section is repetitive and contains guidance that is more properly a part of the manuals of the participating bureaus.

The deletion of the phrase "for other than commercial purposes" in § 3410.1-2(b) would eliminate redundant language since "casual use" is clearly defined in § 3400.0-5(e) of this title.

The provisions of § 3410.2-1(b) that specify persons qualified to hold an exploration license would be eliminated. This provision is not required by law. While admitting there is little incentive to explore for Federal coal if one cannot hold a lease, qualifications of an individual or a company should not be of concern to the Federal government at the exploration license stage.

Language would be added to § 3410.2-1(d)(1), renumbered § 3410.2-1 (c)(1), to require and clarify in the "Notice of Invitation" the locations where copies of exploration licenses are available for inspection by interested parties or potential participants.

The requirement in § 3410.2-2 for environmental impact statements, where needed, would be eliminated since it is redundant. It is extremely unlikely that an environmental impact statement would be needed, given the Congressional mandate that no substantial disturbance occur during exploration. Should the environmental assessment result in a determination that an environmental impact statement is required, the statement would be prepared under existing Department of the Interior procedures, consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

The language of § 3410.2-6 would be placed in § 3410.2-2(a) of the proposed

rulemaking. No substantial disturbance to the natural land surface and improvements can be allowed during exploration under the Mineral Leasing Act (30 U.S.C. 201(b)). Similarly, the requirements of § 3410.2-3 concerning cultural resources and § 3410.2-4 concerning threatened or endangered species and their critical habitats would be moved to the revised § 3410.2-2(a).

In § 3410.3-1(e) the word "revoked" would be changed to the word "cancelled" which is the proper term for action against the exploration licensee. Section 3410.3-1(f) would be shortened by eliminating repetitive requirements contained in the subsequent paragraph (g). The proposed deletions would not affect consultation with any Federal agencies which manage the surface or the licensee's right of refusal of the modified terms and conditions of the plan.

The clause immediately following subparagraph (2) in § 3410.3-1(g) would be amended to allow the Geological Survey to authorize the operator to drill deeper than planned without a full round of consultation. Consultation would no longer be required by paragraphs (g)(1) and (2) and would occur only where a change in plans would lead to altered surface impacts that would necessitate consultation with the Bureau of Land Management or another surface management agency. Required consultation, such as with the Fish and Wildlife Service in accordance with 50 CFR Part 402, would occur in accordance with other existing regulations.

The language of § 3410.3-4(a) would be moved to § 3410.2-2 as a new paragraph (b), and the existing language of § 3410.3-4(b) would be placed where it more appropriately belongs, as a part of § 3410.2-2(a), to address environmental analysis requirements.

Section 3410.3-4(c) would be deleted, and § 3410.3-5(c), renumbered § 3410.3-4(c), would be revised to eliminate references to consultation with surface owners with respect to bonding. These revisions would delete the requirement that each surface owner concur in the amount of the reclamation bond and that reclamation has been satisfactorily completed before the authorized officer can release the bond on an exploration license for split estate coal. The existing rule has, in effect, "delegated" to the surface owner the Federal responsibility to determine the bond amount as well as whether the terms of the license have been met and whether the bond should be terminated. This "delegation" is not required by law. Consultation with surface owners is unnecessary as a formal step. Consultation may occur

informally during field work on the license application, but is not essential in all cases.

The chief responsibility for dealing with private surface owners rests with the exploration license applicants. Additionally, the proposed rulemaking would provide for the Geological Survey's concurrence in release of the bond to make the rule consistent with the Bureau of Land Management-Geological Survey-Office of Surface Mining Memorandum of Understanding that was executed after the July 1979 rules were issued.

The requirements in § 3410.3-5(b) and (c), renumbered § 3410.3-4(b) and (c), for a full round of consultation with the surface management agency would be removed. Where significant changes in a plan would affect any other agency, consultation would occur with that agency as required under existing Department of the Interior procedures.

Language also would be added near the end of § 3410.3-5(b), renumbered § 3410.3-4(b), to protect surface owners, in the absence of an agreement between a surface owner and a licensee, by requiring bonding to assure proper compensation for damages which might occur to the surface improvements of private surface owners because of exploration activity.

The provision in § 3410.4(a) for the authorized officer to require the applicant to collect ground and surface water data would be deleted. The language of the existing regulations exceeds the requirements of the Federal Coal Leasing Amendments Act of 1976. Although this change does not preclude the authorized officer from requesting this information, its collection will be voluntary under the proposed amendment. Failure of the applicant to comply with the request would not be grounds for rejecting the license application. The change proposed in § 3410.4(b), renumbered section 3410.4, would allow more flexibility in the manner in which data obtained from the exploration activity would be provided by the licensee to the Mining Supervisor.

Section 3410.5(a) would be deleted because limitations on the use of the surface are included as a provision in all exploration licenses issued by the Bureau of Land Management. Inclusion of this provision in the regulations is therefore unnecessary. The specific citation of regulations in § 3410.5(c), renumbered § 3410.5(b), would be deleted since this is covered by the requirements in the exploration license for compliance with all applicable local laws and regulations.

Subpart 3420—Competitive Leasing

This subpart of the existing regulations would be revised to consolidate or modify features of the program that have added to its complexity without adding to its effectiveness.

New language in § 3420.0-2 would express more clearly the objectives of the competitive leasing program. Section 3420.0-8, *Policy*, would be eliminated because it repeats statements of policy found elsewhere in these regulations.

Section 3420.1-1 that sets out general competitive leasing procedures would be deleted because the procedures are dealt with in more detail elsewhere in Subpart 3420.

A new § 3420.1-2 would be added to provide for a formal call by the Bureau of Land Management for coal resource information for indication of interest and areas of development potential prior to the initiation or update of a land use plan. This reflects a new Department of the Interior policy to obtain indications of coal interest and information from industry, State and local governments and the general public early in the planning process consistent with the general policy of obtaining information for all resources. The formal call may be combined with the notice of intent to conduct land use planning required by 43 CFR 1601.3(g) or with the land use planning issue identification process provided for at 43 CFR 1601.5-1.

Inclusion of this new provision would respond to a concern often raised by critics of the coal program that industry input is requested too late in the process. Since the existing rules were published on July 19, 1979, the Department has been made aware of instances where companies have identified potential coal lands after land use planning was already either well under way or completed. These company-identified lands might have been considered for coal leasing had information been available early in the land use planning process. In some cases, companies were interested in recovery techniques not normally considered by the Bureau of Land Management or the Geological Survey, such as *in situ* gasification. Companies interested in having the Bureau of Land Management consider particular properties during the land use planning process may also identify these interests throughout the standard public participation phases of the land use planning process. However, a formal request for submission of coal resource information rather than an optional submission will help ensure that all

available information is considered before land use planning decisions are made. There will continue to be a formal call for expressions of leasing interest upon completion of land use planning prior to tract delineation during the coal activity planning as set forth in subpart 3420. Information received in response to the early call for coal resource information may be used together with data received in response to the later call for expressions of interest to estimate market demand for coal reserves and to better approximate desired regional leasing levels.

The existing § 3420.1-3 which requires that leasing occur only within known recoverable coal resource areas would be removed from the regulations. This requirement is no longer necessary as discussed previously in regard to the deletion of the definition in § 3400.0-5(x).

Section 3420.1-4(b)(1)(ii), renumbered § 3420.1-3(b)(1)(ii), would be revised to state that a public body has 60 days to submit the information specified in § 3472.2-5(a)(3) and (4) showing a definite plan to produce energy from the prospective lease and evidence that the plan has been authorized by its governing body. This would change the existing requirement for submittal of this specific qualification information at the same time as the submission of an expression of leasing interest or a lease bid where no expression of interest was made.

Sections 3420.1-5, 3420.2, 3420.2-1, 3420.2-2 and 3420.2-3 all would be condensed and revised in renumbered § 3410.1-4 to state more clearly the requirements for land use planning in Federal coal land areas. Portions of each of these sections are repetitive of the detailed land use planning requirements set forth in 43 CFR Part 1600, Planning, Programming, Budgeting, Subpart 1601—Planning. They are unnecessary here and would be deleted.

Section 3420.1-5(e) which states the requirements for land use planning for Federal coal lands would be deleted. The land use planning regulations in 43 CFR Part 1600 provide the specific requirements for the initiation and preparation of land use plans for all lands administered by the Bureau of Land Management. The Department of the Interior does not believe that specific separate regulations are needed here for coal lands.

The language in § 3420.1-5(f), renumbered § 3420.1-4(c), would be modified to clarify the procedures under which the public may request preparation of a land use analysis for coal related uses in an area of Federal

lands not covered by a completed or scheduled land use plan.

Section 3420.2-1, Preparation of a land use plan, is repetitive of the requirements of § 3420.1-5(b)(1), and would be deleted.

Section 3420.2-2, renumbered § 3420.1-4(d), would be amended to state that the land use plan or land use analysis must contain an "estimate" of the amount of recoverable coal reserves rather than an "assessment". The term "assessment" as used in the existing regulation has a broader meaning than intended.

Section 3420.2-3(a), renumbered § 3420.1-4(d)(1), would be amended to eliminate the requirement for a stringent, sequential application of the land use planning screening procedures. This would give the Bureau of Land Management field offices more flexibility in the use of their limited budget and personnel resources.

New language in § 3420.1-4(d)(2) would be added to replace § 3420.2-3(b). This new section would eliminate reference to the Geological Survey's coal resource occurrence and coal development potential (CRO/CDP) maps. This map series has been discontinued by the Geological Survey. In the future, the Geological Survey will be supplying coal information, including information concerning development potential, to the Bureau of Land Management in the best form available at the time it is needed. This would include a synthesis of the information supplied by coal companies, State governments and the general public to the Geological Survey. This new approach would also involve the use of less formal maps than are now prepared specifically for the Bureau of Land Management offices for use during land use planning. The new section would also eliminate the approach currently used to identify "high and moderate" development potential coal. It is clear from comments received from companies and individuals that the Geological Survey CRO/CDP maps and the Bureau of Land Management inventory maps have not necessarily included all the information on coal with the potential for development in the planning areas. By this amendment, industry, State and local governments and the general public would be afforded an opportunity to bring areas with coal development potential to the attention of the planners to ensure that coal lands of economic interest to industry would be considered during the land use planning process. Industry information would be submitted to the Bureau of Land Management field office

actually doing the planning, usually a district or area office.

Section 3420.2-3(d), renumbered § 3520.1-4(f), would be amended to make multiple land use planning trade-offs in coal land areas discretionary rather than mandatory by changing "shall" to "may." While protection of other resource values which are of a locally important or unique nature not covered by the unsuitability criteria may, in some instances, warrant elimination of coal lands from further consideration, there would be no absolute requirement to eliminate these additional areas.

Section 3420.2-3(e)(3)(i), renumbered § 3420.1-4(g)(3)(i), would be revised to clarify that areas that have been eliminated from consideration for leasing because a significant number of qualified surface owners have expressed a preference against surface mining may be reconsidered for leasing as a result of a change in the qualified surface owner status at the time a land use plan is amended.

Section 3420.2-3(f), relating to thresholds, would be deleted. There has been continuing confusion over how the thresholds should be applied. The concept was designed to prevent land use planners from arbitrarily eliminating specific areas of coal lands when they were actually concerned with ensuring that a specified acreage, whose location was unimportant, from within a larger area, be reserved for a particular purpose as part of land use planning decisions. While this may be a conceptually useful tool, it has not proven practical for land use managers. Since actual practice to date has shown no real need for the use of the threshold concept, it would be eliminated to avoid further confusion.

Section 3420.2-3(g) would be eliminated since the concept of preferred areas for coal development has not been found useful by the Bureau of Land Management field offices. In no instance has a field office needed to specify any smaller acreage of lands for priority consideration from any total area that was found acceptable for further consideration for coal leasing.

Paragraph (a) of § 3420.2-4, renumbered § 3420.1-5, concerning hearing requirements, would be amended to require public notice, and paragraphs (b) and (c) would be deleted since the hearings must be conducted in conformance with the planning regulations in 43 CFR Part 1600 to fulfill this requirement.

Section 3420.2-6, renumbered § 3420.1-7, would be amended by deleting unnecessary and redundant language regarding the purpose of

consultation with the tribal governments.

The procedures governing the establishment and use of regional production goal and leasing targets contained in § 3420.3, renumbered § 3420.2, would be extensively amended by this proposed rulemaking. Actual experience in six coal regions has shown that the system for setting production goals and leasing targets is too long and complex. The process outlined in the existing regulations contains duplication of effort and unnecessary steps. The revision would reduce the complexity of the regulatory process, while retaining the essential elements of reliance upon Governors of affected States for advice concerning appropriate generally stated leasing levels which consider socio-economic and environmental impacts, and of the demand for coal reserves. The term "leasing target" would be replaced by "leasing levels" because the term "target" implies a precision not possible in actual practice. The proposed change also would explicitly allow leasing levels to be expressed as a range of values. The proposed rulemaking reflects the intent that the leasing levels would set a tonnage range as a basis for the proposed action in the regional coal lease sale environmental impact statement.

The section concerning establishment of the coal production regions would be moved to § 3400.5, because the coal regions apply to concerns other than leasing levels.

Experience has shown that the techniques of estimating demand and production and subsequent leasing levels require both market knowledge and forecasting tools. When the provision was originally considered, it was expected that the production goal modeling done by the Department of Energy could be used in all of the coal regions to accurately estimate coal demand as a basis for setting leasing targets. Since that time, the Department of Energy has strongly cautioned the Department of the Interior that the production goals should not be used in this manner. The Department of Energy has emphasized that production goals should only be one guide in establishing leasing levels.

Previous Department of the Interior policy sought to tie leasing targets closely to demand and supply estimates. That policy is felt to be anticompetitive and inflationary. The Department has established a new policy that leasing levels should be approximated, using estimates of the demand for reserves rather than production. By moving toward a more

market-oriented approach to approximating leasing levels, anticompetitive and inflationary effects should be minimized. The leasing levels set by the Department of the Interior would assure that adequate Federal coal would be offered for leasing to satisfy demand for coal reserves with the least costly available coal, including environmental cost, and that adequate competition among coal producers would be encouraged so as to have no adverse effect on coal prices. The exact process that would be used at any given time to estimate leasing levels for any one region would be based on the available data and the current situation in the specified coal region.

The Secretary of the Interior would continue to consult with the Secretary of Energy with regard to the requirements of the Department of Energy Organization Act concerning production goals. The requirement for holding hearings on the Department of Energy production goals has proven to be duplicative, since that Department holds public comment periods on the preliminary goals. The regional coal team hearings on the goals have been an inefficient use of time and effort. The Secretary of the Interior would also continue to consult with the Attorney General to ensure that leasing levels are sufficient to promote competitive coal markets. The details of interagency consultation are more appropriate for inclusion in interagency agreements, rather than Department of the Interior regulations.

The Secretary of the Interior would continue to consult with the Governors of affected states regarding leasing levels and projected social and environmental impacts. The requirement for consultation with the Indian tribes regarding regional leasing levels would also be retained in recognition of the interrelationships of Federal and Indian coal leasing in certain coal production regions.

The regional coal teams would continue to provide general information to the Department of the Interior on the ranges of coal tonnage that could be provided through the coal activity planning process, based on information from land use planning and from the industry expressions of leasing interest and the tract delineation phases of the coal activity planning process. The proposed rulemaking would provide for broadly defined ranges of initial regional leasing levels prepared under the direction of the regional coal teams. The teams would be the forum through which initial leasing level

recommendations are transmitted to the Secretary.

The distinction between preliminary and final leasing targets has been confusing, since many people have incorrectly interpreted the final target as the final decision made by the Secretary of the Interior for the regional lease sale schedule. The proposed rules provide that the range of leasing levels would be used to guide coal activity planning and would be the basis for the proposed action for analysis in the regional coal lease sale environmental impact statement. The requirement for an exact equivalence between the target and the proposed action would be eliminated since the specific tracts that would be available could almost never be arranged to exactly equal the tonnage of a final target. The essential concept of using the leasing level chosen by the Secretary of the Interior as the key to arranging the alternatives in the environmental impact statement would be unchanged.

Finally, the proposed rulemaking would clarify that the Secretary of the Interior's lease sale schedule decision would not be bound by the leasing level set earlier in the coal activity planning process. At the time of a sale decision, the Secretary would have the complete results of the activity planning, including the final environmental impact statement, as well as the results of the consultations with the affected state Governors and, where applicable, other surface management agencies and Indian tribes. These final results, which would not be available at the time the leasing level is established, would provide to the Secretary any new information pertinent to the final decision on a regional lease sale schedule.

The overall revision of § 3420.3, renumbered § 3420.2, would delete § 3420.3-4 that calls for updates, in the form of environmental assessments, to the Federal coal program environmental impact statement in certain circumstances. The Department of the Interior has determined that this section needlessly restricts its flexibility in meeting the mandate of the National Environmental Policy Act (42 U.S.C. 4331 *et seq.*).

The language in § 3420.4, renumbered § 3420.3, concerning coal activity planning would be extensively reorganized and revised to set forth each step of the process in its most logical order.

Section 3420.4-1, renumbered § 3420.3-1, would be modified by adding a new paragraph (c) that contains the provision now contained in § 3400.4(b) and discusses the coal activity planning

responsibilities of each regional coal team. The last sentence of § 3400.4(b) would not be included in the new paragraph since it is already understood in the description of the regional coal team functions that each team member, if desired, may suggest a specific regional lease sale alternative for analysis in the environmental impact statement composed of delineated tracts of preference based on the tract ranking and selection results. This provision would become part of the tract ranking process provided in § 3420.4-4, renumbered § 3420.3-4.

Section 3420.4-2(a), renumbered § 3420.3-2(a), would be modified to eliminate the reference to the regional production goals and leasing targets. This change would be consistent with the revision to § 3420.3 concerning the regional leasing levels.

The last sentence of § 3420.4-2(b) and all of § 3420.4-2(c) would be deleted. These provisions relating to the call for expressions of leasing interest are not necessary as part of the regulatory requirements and would be maintained in Bureau of Land Management instruction memoranda and manuals.

The language in § 3420.4-2(d) relating to special leasing opportunities is repetitive of the provisions set forth in § 3420.1-4 and would be eliminated. Additionally, the level of information requested as part of the call for expressions of leasing interest in § 3420.4-2(e) is contained in the call itself and would be deleted. The information requirements would instead be provided by Bureau of Land Management instruction memoranda and manuals.

The revision of § 3420.4-3, renumbered § 3420.3-3, would eliminate unnecessary detail relating to technical factors for actual tract delineation. These factors would continue to be maintained in the form of internal instruction memorandums and manuals. Sections 3420.4-3(a), (b) and (c) would be replaced by a new § 3420.3-3(a). The substitute language would make it clear that preliminary tracts could be delineated in areas acceptable for further consideration for leasing regardless of whether any expressions of leasing interest have been received in such areas. This approach is an important concept that provides greater flexibility in the coal management program and assures that future Federal coal needs can be anticipated.

Section 3420.4-4, renumbered § 3420.3-4, concerning tract ranking, selection and scheduling, would be reorganized to consolidate appropriate provisions from §§ 3400.4, 3420.4-5 and 3420.4-6. This consolidation would

provide a more coherent description of the coal activity planning and environmental impact statement steps. The new § 3420.3-4 caption would be revised to include "environmental analysis" as well as regional tract ranking, selection and scheduling. Section 3420.4-5 would be deleted in its entirety.

Section 3420.4-4(a), renumbered § 3420.3-4(a), would be amended to remove the requirement for establishing a final leasing target prior to beginning tract ranking. The experience gained under the existing coal program regulations has shown that tract ranking can proceed without the establishment of a leasing target or a leasing level. This revised section would also incorporate the provisions of § 3420.4-4(b)(1), in renumbered § 3420.3-4(a)(1), to state that a regional coal team ranks the tracts in classes of high, medium and low desirability for leasing. The tract selection requirements would be consolidated in the revised § 3420.3-4(b), separate from the tract ranking requirements.

The last sentence of § 3420.4-4(b)(1) would be eliminated, since the regional coal team may defer ranking any delineated tract if it believes the available data for all factors of concern are not sufficient. This type of procedural guidance would be maintained through internal Bureau of Land Management instruction memoranda and manuals.

Section 3420.4-4(b)(3), renumbered § 3420.3-4(a)(3), would be rewritten to state more clearly the regional coal team's reliance on the expertise of appropriate Federal and state agencies. Section 3420.4-4(b)(4), renumbered as § 3420.3-4(a)(4), would be amended to make clear that recommendations are to be requested from the Bureau of Indian Affairs, as well as the affected Indian tribes concerning any likely impacts of Federal leasing on Indian lands.

Section 3420.4-4(c)(1), renumbered § 3420.3-4(b)(1), would incorporate the provisions contained in § 3420.4-4(c)(3) that the regional coal team shall select tract combinations to approximate the regional leasing level. The revised language would require the team to select at least once combination of tracts to approximate the regional leasing level, consistent with the revised Department of the Interior policy. The team could also select tract combinations representing alternative leasing levels. This change would delete the requirement for the exact matching of the tonnage of one combination of tracts to meet a target, and would allow

more flexibility in approximating the regional leasing level.

"Emergency leasing" would be substituted for "bypass" situations in § 3420.4-4(c)(2), renumbered § 3420.3-4(b)(2), to broaden the considerations used by the regional coal team for tract ranking and selection. This revision would allow for production maintenance needs as defined in § 3425.1-4(a)(2) of this title, an inadvertent limitation in the existing rules.

Section 3420.4-4(c)(4), concerning compliance of tract selections with the land use planning provisions, repeats the requirements previously stated in § 3420.1-5 and would be deleted.

The procedural requirements concerning a notice of intent to rank tracts stated in § 3420.4-4(d) would be deleted and made part of Bureau of Land Management internal instruction memorandums and manuals. Such a notice of intent would be combined with the public notice of the regional coal team meeting where tract ranking would take place.

Section 3420.4-5(a) and (b), concerning environmental analysis requirements, would be revised and moved to follow § 3420.4-4(c)(3), now incorporated with § 3420.3-4(b)(1). This revised section, renumbered § 3420.3-4(c), would place the environmental impact statement provisions in a more logical sequence directly following the provisions for the tract ranking and selection process.

Section 3420.4-4(e), renumbered § 3420.3-4(d), would be amended to clarify how the tract ranking and selection process, including the criteria used for ranking, are to be published in the regional lease sale environmental impact statement.

Section 3420.4-6, which requires public meetings, would be deleted. However, a similar provision for public hearings would be incorporated in the last part of § 3420.4-4(e), renumbered § 3420.3-4(e). Since public hearings are held on these same matters as part of the draft environmental impact statement, the two separate sections are repetitive, and have been confusing to the public. This consolidation would reduce duplicative steps in the coal activity planning process.

Section 3420.4-4(f), renumbered § 3420.3-4(f), would be revised to eliminate the current inconsistency with §§ 3400.4(c) and 3420.4(c)(1). The recommendations of the regional coal team for specific tracts for lease sale and a lease sale schedule are forwarded to the Director of the Bureau of Land Management upon completion of the final environmental impact statement, not upon the close of the comment

period on the draft environmental statement as implied in § 3420.4-4(f).

A new paragraph would be added following § 3420.4-4(f), moving the language of existing § 3400.4(c) concerning the recommendations of the regional coal team to this more logical location in the activity planning process. This new section, numbered § 3420.3-4(g), would allow a clearer understanding of the regional coal team's final recommendation responsibilities in relation to the Secretary of the Interior's decision-making process.

Section 3420.4-4(g), renumbered § 3420.3-4(h), would be reworded to remove the reference to regional leasing targets, and would state instead that demand for coal is a more appropriate measure to consider as part of the need to schedule regional coal lease sales. This revision would reflect the Department of the Interior's revised policy concerning leasing to meet the demand for coal reserves.

As stated above, the section on environmental analysis, § 3420.4-5, would be moved. Paragraphs (a) and (b) would be consolidated into renumbered § 3420.3-4(c). Paragraph (c) would be deleted, as it contains superfluous language. Similarly, § 3420.4-6 would be combined with § 3420.4-4(e), renumbered § 3420.3-4(e).

Section 3420.5-3(a), renumbered § 3420.4-3(a), would be amended to provide a 30-day comment period for the Governor of each affected state prior to either the adoption of a regional lease sale schedule or prior to the publication of a notice of sale in response to a lease application in a state. Similarly, § 3420.5-5, renumbered § 3420.4-5, concerning the consultation with the Attorney General, would be amended to provide a 30-day comment period.

Section 3420.6 regarding qualified surface owner consent considerations prior to the decision by the Secretary of the Interior on a regional lease sale schedule would be deleted. All the split estate leasing requirements are fully covered in Subpart 3427 of this title. Removal of § 3420.6 would provide clarity and eliminate confusion regarding the timing of receipt of written evidence of consent from qualified surface owners for tracts contained in regional lease sale schedules.

Section 3427.2 requires that consents be filed prior to the publication of the lease sale notice for the lands to which the consent applies. This filing deadline is after a decision by the Secretary on a regional lease sale schedule. Interested parties have expressed confusion and concern that tracts could be unnecessarily eliminated just because

the acceptable written consent documents have not been submitted early. The deadline for submission of consent documents as required by § 3427.2 is more clearly known subsequent to a decision on the regional lease sale schedule including a decision on the sale date time frames. Announcement of the adoption of a regional lease sale schedule as required by § 3420.7-1, renumbered § 3420.5-1, would continue to provide more specific information regarding the deadline for anyone to submit written consent documents in accordance with Subpart 3427.

Subpart 3422—Lease Sales

Subpart 3422 would be changed to reflect the current Department of the Interior policy and procedures for fair market value determination and to clarify and simplify the wording of the notice and procedures for conducting lease sales.

Section 3422.1-1, renumbered § 3422.1, concerning mineral evaluation, fair market value determination, and maximum economic recovery would be revised to remove the term "mineral evaluation" from the section title as well as the elimination of the obsolete term "coal resource economic value" (CREV). This section would also be revised to delete the requirement for the Geological Survey to prepare a pre-sale maximum economic recovery (MER) determination. As is presently the practice, the statutory requirement for achievement of maximum economic recovery of Federal coal would be met through final maximum economic recovery determination prior to approval of a resource recovery and protection plan. A preliminary maximum economic recovery determination that is subject to change would be eliminated as an unnecessary step in the coal leasing process. Public comments on factors that may affect maximum economic recovery will continue to be solicited prior to lease sale. Any comments received would continue to be used along with other information obtained before and after the lease sale to make a final maximum economy recovery determination.

Section 3422.1-2(a), renumbered § 3422.1(b), would be revised to allow for the final determination of fair market value to take place after the lease sale so that competitive interest and other factors that would not be available prior to lease sale could be used to help determine whether the high bid represents fair market value. The change permits a greater reliance upon the

marketplace to provide an indication of fair market value.

The amendments to these sections do not reflect a change in the Department of the Interior requirements to achieve maximum economic recovery or to obtain fair market value. The proposed changes are consistent with the requirements of the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976.

Section 3422.1-2(b) would be deleted. A separate reference is not needed for public body lease set-aside sales (or small business set-aside sales) since the fair market value of all competitive lease sale tracts would be determined in the same manner.

The caption for § 3422.2, "Notice of sale," would be revised to add "and detailed statement." The notice of sale requirements in this section would be amended to delete reference to a preliminary maximum economic recovery.

The provisions for the detailed statement contents in § 3422.2(c) would be amended to delete unnecessary language and information that would be supplied in the detailed statement. However, new language would be added to indicate that the detailed statement would include any other information deemed appropriate by the authorized officer. Sections 3422.2(c) (2), (3), (6) and (9) would be deleted. These sections are adequately covered in § 3422.2(c)(1) which states that an explanation of the manner in which bids may be submitted would be provided in the detailed statement. This information is always provided as part of the bidding instructions concerning a competitive lease sale.

Section 3422.2(d) would be amended to clarify that each successful bidder would be required to reimburse the Government for a proportionate share of the sale notice publication cost.

A new section on bidding systems would be added as § 3422.3-1 to allow use of any bidding systems authorized by the Department of Energy, which is the agency responsible for establishment of bidding systems under the Department of Energy Organization Act.

Section 3422.3-2 would be deleted to maintain consistency with the Department of the Interior's view that the concept of intertract competition is more accurately described as a sale procedure.

Section 3422.3-4 concerning consultation with the Attorney General after a competitive lease sale would be shortened and simplified to eliminate unnecessary detail. New language would be substituted to indicate that a

description of the information currently required by the Attorney General may be obtained from the authorized officer. The language in § 3422.3-4(d), renumbered § 3422.3-4(c), regarding the post-lease sale anti-trust review would be amended to indicate that the Attorney General would notify the Director rather than the authorized officer if the successful bidder's statement of coal holdings is incomplete or inadequate, in order to stop the 30-day review period. This change would facilitate the Department of Justice administrative procedures.

The proposed changes in § 3422.4 would simplify and clarify the requirements regarding award of a lease. A new provision § 3422.4(e), would clarify that the deposit submitted with a bid would be refunded if a lease cannot be awarded for reasons beyond the control of the successful bidder.

Subpart 3425—Leasing on Application

Subpart 3425 would be rewritten to eliminate several constraints under which the emergency leasing system in § 3425.1-4 has been operating. The intent of the emergency leasing provisions remains unchanged. Emergency leasing should be used only in situations where the need for coal reserves cannot be timely accommodated by the regional leasing process under 43 CFR Part 3420.

The policy § 3425.0-8 would be deleted because it is duplicative of the regulations which follow in §§ 3425.1 through 3425.4.

Section 3425.1-4(a)(1) would be modified to delete the requirement that an applicant must have been producing coal from an existing mining operation for at least 2 years prior to the filing of an application for an emergency lease. It has been determined that the 2-year requirement is not needed and is potentially counterproductive and unnecessarily restrictive. Requiring the existence of a mine for which coal reserves would be required at the time of application should be sufficient to prevent abuse of the emergency lease application process. There has been at least one instance where an applicant failed to meet the 2-year operation requirement at the time the application was filed. The application was denied and Federal coal was bypassed. The potential loss of coal resources in scattered Federal sections necessitates this proposed regulation change. It remains the responsibility of the Department of the Interior, where factors are within its administrative control, to assure that new leases generated through the coal activity planning process in Subpart 3420

provide sufficient reserves for efficient, economic mining development. However, it is not always possible to foresee bypass situations.

All three paragraphs of § 3425.1-4(c) would be eliminated because they are unnecessarily restrictive. The purpose of emergency leasing is to supply coal reserves in a timely fashion when the regional leasing structure in Subpart 3420 is unable to make coal reserves available timely. When originally promulgated, there was considerable concern that lease applicants would attempt to abuse this section of the regulations. The restrictions in § 3425.1-4(c) were aimed at the potential abuse. Experience under the existing regulations has shown this control is not needed. It has, in fact, turned out to be counterproductive, particularly in the case of underground mining where mining operations and land requirements often change as new geologic factors arise. The restrictions in paragraph (c) of the existing regulations have made the Bureau Land Management's response to these changing needs difficult, if not impossible. Section 3425.1-8 would be strengthened by substituting language that issuance of a lease under Subpart 3425 of this title does not compromise the regional leasing process under Subpart 3420 of this title. This would ensure that the elimination of § 3425.1-4(c) would not result in abuse of the regional leasing process. Further, the Department of the Interior intends to retain in § 3425.1-4(b) the 8-years-of-production limit on the reserves that may be leased under this subpart.

Section 3425.3 concerning the environmental analysis requirements would be simplified by referring directly to the regulations of the Council on Environmental Quality (40 CFR Part 1500) which implement the provisions of the National Environmental Policy Act of 1969. The procedures deleted would be retained in Bureau of Land Management instruction memoranda and manuals.

Section 3425.4(a)(1) would be amended to clarify and simplify the language concerning public comment. Section 3425.4(a)(3) would be deleted. The timing of the required surface owner consent is already covered in § 3427.2(a)(1) and does not need to be repeated here.

Section 3425.4(b)(2) would be eliminated. This section of the existing regulations requires all successful bidders for an emergency lease to have an emergency need and effectively limits most sales to one qualified bidder. By removing this requirement, the

Department of the Interior expects an increased potential for competition for Federal coal leased, especially with respect to small businesses.

Section 3425.5, regarding lease terms, would be deleted because it is redundant of other sections of these regulations.

Subpart 3427—Split Estate Leasing

Subpart 3427 has been revised to clarify and simplify split estate leasing and surface owner consent requirements.

Section 3427.1 would be clarified to state that any written consent, or evidence thereof, must indicate that the qualified surface owner would allow entry and commencement of surface mining operations.

Section 3427.2 would be amended to delete the requirement that a written consent, or evidence thereof, must be filed at least 30 working days prior to the publication of the lease sale notice of the lands to which it applies. This extra length of time has been found to be unnecessary and administratively cumbersome. The section would be amended to require the filing of consent documents prior to the deadline for the posting of the lease sale notice. The information regarding specific sale dates and sale notice posting dates is known more definitively after a decision either on a regional lease sale schedule or on a coal lease application. This information is available from the authorized officer. The final regional lease sale schedule decision published in accordance with § 3420.7, renumbered § 3420.5, will state the general time frames for regional lease sales and the posting of the sales notices. The last sentence of this section is therefore unnecessary and would be deleted. Guidance on the contents of the *Federal Register* and newspaper notices regarding the adoption of regional lease sale schedules would be handled through internal Bureau of Land Management instruction memoranda and manuals.

Section 3427.2(d) concerning priority consideration of split estate lands covered by written consents already filed over split estate lands where no written consent has been filed, would be deleted. As stated earlier regarding § 3420.6, removal of this section would also eliminate confusion regarding the timing of receipt of written consents from qualified surface owners and would eliminate concern that some interested parties have expressed that tracts could be unnecessarily and prematurely eliminated during the coal activity planning process just because the written consent documents have not been submitted early. By eliminating

this section, qualified surface owners would be provided greater flexibility to see the results of the activity planning process before making any decision whether to grant written consent or not.

Section 3427.2(e), renumbered § 3427.2(d), would be amended to delete the 15-day time frame for verification of the written consents, or evidence thereof, that have been filed. This requirement has been unnecessarily burdensome and is a function of internal manpower and budget constraints as well as the terms presented in the consent documents. Additionally, this section would be amended to clarify the requirements for the transferability of a surface owner consent from a qualified surface owner. The successful bidder must be able to assume all rights and obligations of the holder of the consent, and neither the holder nor the grantor of the consent can prevent the successful bidder from assuming all the rights and obligations of the holder of the consent by imposing additional costs or conditions.

Section 3427.2(j) would be renumbered § 3427.2(i) and a new § 3427.2(j) would be added to state that if a surface owner fails to provide evidence of qualification in response to surface owner consultation (during land use planning), or requests for such evidence, the surface owner would be presumed not to meet the definition as specified in section 714 of the Surface Mining Control and Reclamation Act. This is intended to require the surface owner to assume the responsibility of demonstrating qualification under the Act.

A new § 3427.5 would be added to clarify the rights and protections afforded surface owners who are not qualified surface owners under section 714 of the Surface Mining Control and Reclamation Act. These rights are defined by the statute under which the surface was patented and the coal was reserved to the United States (for example, section 9 of the Stock-Raising Homestead Act of 1916).

Subpart 3430—Preference Right Leases

Section 3430.0-7 would be revised to make the scope of this subpart more understandable. The proposed changes to § 3430.2-1(a) would eliminate the requirement that demonstrated reserves be made by coal bed, and thus would restore the May 7, 1976, regulatory provisions whose validity was upheld by the decision in *NRDC v. Burklund*, 609 F.2d 553 (1979).

Sections 3430.2-1(c) (4), (5) and (6) would be deleted to remove unneeded detail from the section. This deletion would not affect the types and levels of

information required for an initial showing. A new section 3420.2-1(d) would be substituted to allow the authorized officer to request, or the applicant to submit, any other information which the Department of the Interior does not already have but needs for the initial showing.

Section 3430.2-2 of the existing regulations requires preference right lease applicants to file certified abstracts stating the absence of mining claims and correlative information. Section 2(b) of the Mineral Leasing Act limited the issuance of coal prospecting permits to "unclaimed, undeveloped" lands. The meaning of this phrase has been the subject of a series of opinions from the Department of the Interior's Office of the Solicitor (Solicitor's Opinion M-36893 of August 2, 1977, 84 I.D. 44 (1977), "The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits for Coal and Phosphate;" Solicitor's Opinion M-36893 (Supp.), 86 I.D. 627 (1979), "Effect and Implementation of Solicitor's Opinion M-36893 on 'Unclaimed, Undeveloped,'" Solicitor's Opinion M-36893 (Supp. II) of January 8, 1981, "The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits and Preference Right Leases for Coal and Phosphate (Modifying Solicitor's Opinion M-36893 of August 2, 1977, and its Supplement of November 19, 1979, on the same subject). In these opinions, the Solicitor concluded that the "unclaimed, undeveloped" restriction limits issuance of a coal or phosphate prospecting permit to lands upon which no valid, vested rights existed at the time the prospecting permit was issued.

The most recent opinion concluded that no mining claim located after the effective date of the Multiple Mineral Development Act of 1954 (30 U.S.C. 521 *et seq.*) is adverse to any subsequently issued coal or phosphate prospecting permit and any such claim would not render the land embraced in such a post-1954 claim subject to the "unclaimed, undeveloped" restriction.

The Solicitor also concluded that where the public land records showed no adverse interest at the time of the issuance of a prospecting permit, the permit was to be considered as issued properly, subject only to the rights of a pre-existing adverse claimant. Since the prospecting permit is considered to have been issued properly, there is no legal requirement demanding that the permittee prove to the Bureau of Land Management that the lands in the permit area are "unclaimed, undeveloped." The requirement for an abstract and additional information found in

§ 3430.2-2 was based on the Solicitor's Opinion of August 2, 1977. Since that opinion was modified in this respect by the Solicitor's Opinion of January 8, 1981, there is no legal requirement, other than the existing regulation, that abstracts be filed. The Department of the Interior has consequently decided to eliminate the regulation and rely on the assumption that individuals claiming pre-existing adverse rights will assert those rights as they see fit.

The specific procedures regarding the environmental analysis provisions set forth in § 3430.3-2 (b), (c), (d) and (e) would be deleted. New language would be substituted as § 3430.3-2(b). This revision would eliminate the repetitive wording for steps already required by the Council on Environmental Quality 42 CFR Part 1500 regulations. It would also allow more flexibility to complete the required environmental analysis as part of the coal activity planning process, and would result in better use of the limited budget and personnel resources of the Bureau of Land Management field offices. The provisions proposed for deletion, including an evaluation of all reasonable alternatives, would continue to be carried out in Bureau of Land Management instruction memoranda and manuals.

Section 3430.4-1(b) would be amended to state that the proposed lease form and the environmental analysis document may be transmitted by the authorized officer separately or with the request for a final showing.

Sections 3430.4-1(c)(3) and 3430.4-1(d) would be modified to clarify the language. The final showing requirement in § 3430.4-1(c)(3) would be changed to restore in significant part the corresponding language in the Department of the Interior's May 7, 1976, final rulemaking covering the processing of preference right lease applications (see § 3521.1(c)(4) of the May 7, 1976, rules). This amendment is intended to remove ambiguities created by the present wording of the regulation without making any substantive change in the requirements placed upon preference right lease applicants.

Section 3430.5-1(a) would be expanded by adding new language concerning the timely declassification of data that would be needed to assist in the proceeding of an application within the specified additional time limits provided in § 3430.2-3(b), renumbered § 3430.2-2(b). Failure to timely submit the requested data would be cause for rejection of the application.

The provisions of § 3430.5-3(b) concerning the initiation of a lease exchange would be moved to § 3430.5-4 where it is more appropriately placed.

The portion of § 3430.5-4 which is repetitious of § 3435.1 would be deleted. The new language in § 3430.5-4 would clarify the criteria for initiation of a lease exchange.

To eliminate repetition, the "lease area" language in § 3430.6-3 would be deleted. Section 3430.6-4, renumbered § 3430.6-3, would be changed to provide consistency and cross-referencing to the commercial quantities definition in the proposed Department of Energy rules at 10 CFR Part 378.

Subpart 3435—Lease Exchange

Section 3435.0-3 would be updated to include additional authorities for lease exchange enacted by Congress.

The language in § 3435.1(c) would be clarified to cross-reference the regulatory provision that states the minerals for which an exchange lease may be granted. Section 3435.1(e) would be deleted because it is repetitive and contains an unclear policy statement. Section 3435.2(b) would be amended to include the additional authorizations enacted by Congress for exchanges enumerated in the revised § 3435.0-3.

Section 3435.3-1(c) would be deleted and replaced by two new sections, § 3435.3-1(c) and (d), that would clarify the requirements for an exchange notice. The 60-day time limitation for a lessee or preference right lease applicant to respond to a proposed coal lease exchange would be deleted. The detail and scope of a proposed exchange may in some cases require additional time to fully and adequately prepare an evaluation for consideration and reply to the Department of the Interior. This restrictive requirement would be eliminated by this proposed rulemaking.

The repetitious language in § 3435.3-3(a) would be eliminated and replaced with a cross-reference to § 3435.1 which states the requirements for an exchange.

Section 3435.3-5 would be reworded to clarify the provision and eliminate superfluous language. A public hearing could be held as part of the comment process on the draft environmental impact statement. The Federal Register notice of availability of the environmental impact statement would suffice for the requirement in paragraph (a) of this section.

Changes in § 3435.3-6 would clarify that the Governor of the State in which the exchange lands are located would be provided a 45-day comment period after notification of a proposed exchange prior to the Secretary of the Interior consummating the exchange.

Section 3435.4 concerning the consummation of an exchange would be rewritten for clarity with no change in the substance of the requirements.

Subpart 3436—Lease Exchange—Alluvial Valley Floors, and

Subpart 3437—Coal Land Exchange—Alluvial Valley Floors

As part of the Federal coal management program, Subparts 3436 and 3437 of the existing regulations established a program by which persons holding leases for Federal coal deposits or owning fee title to coal deposits which cannot be mined by surface mining operations, because of section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)), could seek to acquire by exchange other Federal coal leases or fee title to Federal coal deposits, as authorized by that Act. The existing regulations established the criteria for coal lease and coal land exchanges and provided a general procedural framework for the consummation of such exchanges. The preamble to that regulation stated that more detailed standards and procedures for this complex process would be provided in the internal Department of the Interior instruction memoranda or manuals.

The Department of the Interior, in response to a district court decision, has determined that it should clarify and supplement certain of the regulatory provisions and provide more detailed statements on certain procedural aspects of the process, and would do so through this proposed rulemaking. This proposed rulemaking would consolidate in Subpart 3436 the coal lease and fee coal exchange programs currently found in Subparts 3436 and 3437.

The qualification standards would be restated and clarified and procedural requirements would be stated in more detail, in the revised Subpart 3436. A person seeking a coal lease exchange must meet the requirements set out in section 510(b)(5) of the Surface Mining Control and Reclamation Act in order to be qualified for an exchange under this statute. A person must be the holder of a lease for Federal coal deposits located west of the 100th Meridian, west longitude, and surface coal mining operations on that lease must be prohibited by section 510(b)(5) of the act because such operation would interrupt, discontinue or preclude farming on alluvial valley floors, or because such operations would materially damage the quantity or quality of water supplying the alluvial valley floor. Surface coal mining operations are not prohibited by section 510(b)(5) of the Act if they would have a negligible impact on a farm's agricultural production, or if the lands affected are undeveloped range lands which are not significant to farming on

the alluvial valley floor. The person seeking a coal lease exchange must also have made substantial financial and legal commitments prior to January 1, 1977, in connection with the lease and may not be entitled to continue any existing operation under the grandfather clause. A preference right lease applicant may qualify for an exchange under this program if he meets the statutory requirements including the requirement for substantial financial and legal commitments.

The term "substantial financial and legal commitments" is relative, and its meaning must be gauged by the circumstances of a particular case. In determining whether such commitments have been made, the Secretary of the Interior will identify the level of expenditures made prior to January 1, 1977, that are exclusively related to development of the coal resource which is under lease or is the subject of the preference right lease application. This would be taken together with the damages for which the person would be liable as a result of any legal commitments made prior to January 1, 1977, solely in connection with development of the coal resource. The Secretary would then compare that level of total expenditure to the estimated total cost of developing the coal resource to the point for establishing a producing surface coal mining operation. A determination would then be made on a case-by-case basis as to whether the commitments were "substantial" so as to qualify the person for an exchange.

The Secretary of the Interior would exercise the authority to consummate coal lease exchanges when the Department finds that a particular exchange would serve the public interest. In determining whether a particular exchange will serve the public interest, the Secretary will consider a wide range of factors and will take cognizance of the Congressional policy expressed in section 510(b)(5) of the Act in favor of providing relief for those who have made substantial financial and legal commitments toward development of coal resources. This Congressional policy creates a presumption that an exchange with a qualified applicant would serve the public interest. The Secretary retains discretion to determine that disposition of a particular Federal coal lease by means of exchange would not serve the public interest.

The lands that would be leased by the Secretary of the Interior in exchange must be processed through the land use planning procedures described in §§ 3420.1-5 and 3420.2 of this title,

renumbered § 3520.1-4 in these proposed regulations. The land use planning would result in the identification of Federal lands that are acceptable for coal leasing. The exchange applicant may seek a lease for lands that have been or may be so identified.

The exchange process may be initiated by a person believed to be qualified for an exchange under this program. The Secretary of the Interior will receive and evaluate the exchange request to determine whether the proponent is qualified. If the exchange proponent is qualified, the Secretary and the proponent will engage in negotiations and the exchange application will be processed in accordance with the general rules stated in Subpart 3435 of this title.

Coal lease exchanges would be made on an equal value basis as provided in § 3535.3-4. In determining the value of the leases to be relinquished, the Secretary of the Interior will estimate the value as if coal mining operations would proceed on the lease. Estimating the fair market value of the lease to be relinquished in a manner that assumes that surface coal mining operations cannot occur would result in an estimated fair market value near zero and would frustrate the Congressional intent of section 510(b)(5) of the act to provide relief to those who have made substantial financial and legal commitments in conjunction with development of the coal lease.

Applicants for fee coal exchanges must also meet the requirements of section 510(b)(5) of the Surface Mining Control and Reclamation Act. A person seeking a fee coal exchange must be the owner of a coal deposit located west of the 100th Meridian, west longitude, and surface coal mining operations must be prohibited by section 510(b)(5) of the Act because such operations would interrupt, discontinue or preclude farming on alluvial valley floors, or would materially damage the quantity or quality of water supplying an alluvial valley floor. Section 510(b)(5) of the Act also requires that the fee coal owner not be entitled to continue any existing operation under the grandfather clause. Sections 3437.1-2(c) and 3437.2(a) of the existing regulations state that the Secretary of the Interior will evaluate each exchange request to determine whether an exchange is in the public interest, and that an exchange will not be consummated if the prohibition against mining the coal underlying or near an alluvial valley floor does not substantially decrease the value of or prevent the successful mining of other

coal that would have been developed in conjunction with coal underlying or near the alluvial valley floor. The existing regulations also require that a fee coal exchange applicant have made substantial financial and legal commitments, either directly or indirectly through a lessee, in order to be qualified for an exchange. These provisions would be deleted by the proposed rulemaking.

In *Texaco Inc. v. Andrus*, Civil No. 79-2448 (D.D.C. August 15, 1980), the court ruled that section 510(b)(5) of the Surface Mining Control and Reclamation Act made fee coal exchanges mandatory on the part of the Secretary. Therefore, the court held that the Secretary could not decline to consummate an exchange because the surface coal mining prohibition of section 510(b)(5) of the Act would only have a minimal impact on a larger operation or because the exchange would not serve the public interest, and 43 CFR 3437.1-2(c) and 3437.2(a) were remanded to the Secretary of the Interior for revision.

The absence of discretion with respect to these exchanges also renders meaningless the substantial financial and legal commitment requirements that trigger the presumption that exchanges would serve the public interest (43 CFR 3437.11(b)). However, the court also ruled that the Secretary of the Interior has discretion to determine the particular Federal coal deposits that would be disposed of through exchange and that the tracts to be exchanged must be of equal value and in the same state as required by section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

The Department of the Interior would delete from the existing fee coal exchange regulations: (1) The indication that the Secretary of the Interior will decline to exchange if the surface mining prohibition only has minimal impact; (2) the requirement that the Secretary evaluate whether an exchange would serve the public interest; and (3) the substantial financial and legal commitments requirement. These changes are reflected in the new language of Subpart 3436.

Section 510(b)(5) of the Surface Mining Control and Reclamation Act provides that fee coal exchanges are to be consummated pursuant to section 206 of the Federal Land Policy and Management Act. After the Secretary of the Interior has received and evaluated an exchange proposal and has determined that the proponent is qualified, the exchange would be processed in accordance with the regulations implementing section 206 of

the Federal Land Policy and Management Act, except as provided in these proposed rules. Cash equalization of value is allowed, but it may not exceed 25 percent of the value of the Federal property to be exchanged. As in the case of coal leases, the value of the coal deposits to be taken by the Secretary of the Interior through the exchange will be determined in a manner that assumes coal mining is not prohibited. Of course, the discretionary aspect of exchanges in section 206 of the Federal Land Policy and Management Act does not apply to fee coal exchanges.

Subpart 3440—Licenses to Mine

The land sentence in § 3440.1-4(c)(3) and all of § 3440.1-5 would be deleted because they are unnecessary. These requirements are stated in the license.

A new section at the end of the subpart, numbered § 3440.1-6, would be added to include the cancellation or forfeiture provisions currently found in § 3471.3-1. Inclusion of these requirements in Subpart 3440 would be more logical.

Subpart 3451—Continuation of Leases—Readjustment of Terms

Section 3451.1(a)(3) would be deleted to provide consistency with the Department of the Interior's revised policy of application of unsuitability criteria to existing leases. This policy change is outlined in the discussion of Subpart 3461 below. The deletion of this section, however, would not diminish the Department of the Interior's responsibility to comply with the mandatory criteria set forth in section 522(e) of the Surface Mining Control and Reclamation Act. The review of existing leases for the identification of resource values protected under section 522(e) of the Act would occur when determining whether to issue a mining permit. This would eliminate an unneeded layer of analysis and would defer consideration of resource factors of concern to the appropriate decision point prior to the time of mine development. Until the time of an application for a mine permit, no effect on the leased lands is contemplated. Department of the Interior guidance through instruction memoranda and manuals would set out the internal procedures to assure compliance with the applicable statutory provisions.

Section 3451.1(b) would be deleted because the June 1, 1980, date is no longer applicable. However, this would not eliminate notification to the coal lessee of a proposed readjustment. The procedures for notifications would be provided for in internal Bureau of Land

Management instruction memoranda and manuals.

The last sentence in § 3451.1(c) would be deleted. Provisions covering diligent development and continued operation are specifically set out in the proposed Department of Energy 10 CFR Part 378 Diligence Requirements rules.

Section 3451.2(b), stating the notification procedures for readjusted lease terms, would be deleted because it is redundant of the provisions in § 3451.2(c).

Subpart 3452—Relinquishment, Cancellation and Termination

The preamble to the current coal program regulations (44 FR 42603) states that § 3452.1-2 as it was proposed was changed in the final rulemaking to reflect the Department of the Interior's practice of allowing the date of a lease relinquishment, upon approval, to relate back to the date it is filed with the appropriate Bureau of Land Management field office. The announced change never appeared in the final version of § 3452.1-2. The current §§ 3452.1-2 and 3452.1-3 are identical to their proposed versions. Section 3452.1-3 presently provides that a coal lease relinquishment shall be effective on the date on which the authorized officer determines that the lessee has discharged all obligations under the lease and regulations. Therefore, it is proposed to amend § 3452.1-3 to make the change originally contemplated by the July 19, 1979, regulations.

Section 3452.3, concerning lease terminations, would be expanded to state that leases issued or readjusted after August 4, 1976, shall be relinquished, cancelled or terminated if the lessee does not meet the diligent development requirements. This is in compliance with the statutory requirements of the Federal Coal Leasing Amendments Act of 1976.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

Sections 3453.1-1(b) through 3453.1-5 are proposed for deletion from this subpart because the information contained in these sections already appears in Subpart 3472. Revised § 34453.1 would cross-reference Subpart 3472.

Several points of clarification are proposed in §§ 3453.2-2 and 3453.2-3. New language would be added to § 3453.2-2(a) to state that a transfer of record title shall be accompanied by a request for approval from the transferee. Section 3453.2-3 would be revised to substitute the words "instruments of transfer or requests for approval" for the words "an application for approval of a

transfer" in the first sentence and "instrument of transfer" for "application" in the second sentence. This would clarify this section.

Section 3453.2-4, which addresses bonding requirements in relation to lease transfers, would be amended to cover any bed of coal deposits as well as legal subdivisions involved in a partial lease transfer.

Section 3453.2-5 is proposed for deletion because § 3453.2-2 requires that the serial numbers of the leases or portions thereof proposed to be transferred be given. The lease form contains the necessary description of the lands of each lease. The last sentence of § 3453.2-5 would be deleted to be consistent with the proposed change in the logical mining unit requirements in 30 CFR 211.80.

Section 3453.2-6, renumbered § 3443.2-5, would be revised to clarify the meaning of partial assignments.

A new § 3453.3-1(h) would be added to clarify that violation of section 3 of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. 201(a)(2), may be used as grounds for disapproval of a transfer.

Section 3453.3-2(b) would be shortened to eliminate the repetition of the antitrust review requirements in § 3422.3-4.

Section 3453.3-3 would be changed to state that a transferee must make a request in writing if the transferee wishes the transfer to be effective the first day of the month of the approval.

Subpart 3461—Federal Lands Review—Unsuitability for Mining

Revisions to the unsuitability criteria provisions of Subpart 3461 are proposed: (1) in response to litigation challenging the validity of certain of the criteria; (2) to reflect policy changes; and (3) to clarify and simplify the regulations.

Several changes would be made in subpart 3461 as a result of a legal challenge to their validity in *Texaco, Inc. v. Andrus*, Civil No. 79-2448 (D.D.C. August 15, 1980). During the course of the litigation the Department of the Interior agreed to delete the reference to agricultural crop production in Criterion 2 in § 3461.1(b)(1) and to include an additional exception in Criterion 3 in § 3461.1(c)(2) relating to buffer zones around the rights-of-way of public roads. As a result of the decision of the district court, the Department would include an exemption in Criteria 9, 11, 12, 13 and 14 in § 3461.1(i), (k), (l), (m) and (n) in favor of those who have made substantial financial and legal commitments toward developing a surface coal mine.

The Bureau of Land Management has issued an instruction memorandum to its field offices so that no action inconsistent with the district court's decision will be taken.

Criterion 1 (National Park lands and other Federal lands systems) would be amended by deleting the last sentence. This amendment would reflect the district court decision in *Texaco, Inc. v. Andrus*. That consideration of lands under study for inclusion in a Federal lands system as unsuitable for coal leasing exceeds the authority granted by the Surface Mining Control and Reclamation Act. The court ruled this portion of the criterion in § 3461.1(a) to be invalid because the Act only authorizes an unsuitability determination when the lands are actually included in the Federal lands system. The court further ruled that the Secretary of the Interior's general discretion to decline to lease lands for coal development purposes is modified by the Surface Mining Control and Reclamation Act so that the Secretary is precluded from refusing to issue leases for lands under study for inclusion in a Federal lands system as an exercise of his general discretionary leasing authority under the Mineral Leasing Act, as amended.

Criterion 17 (municipal watersheds) in § 3461.1(q)(2) would be reworded for clarity. This criterion would be expanded to require consultation with the incorporated entity or the responsible governmental unit rather than the concurrence of that entity with a determination that surface coal mining can occur. This change was generated by the litigation and court decision in *Texaco, Inc. v. Andrus*. The criterion is limited to Federal lands which are a part of municipal watershed.

The Department of the Interior policy changes that are reflected in this proposed rulemaking concern the applicability of the unsuitability criteria to leased lands and preference right lease applications during land use planning.

Section 3461.4, concerning the applicability of the unsuitability criteria to leased lands, would be revised to remove such requirements. This Department policy change would exempt all existing leases from the unsuitability criteria screening process identified in Subpart 3461. However, it does not exempt Federal coal lease development from the statutory environmental protection requirements which are determined by the Office of Surface Mining or the states at the time of the mine permit application review. Nor does it remove from consideration by the regulatory authority any

recommendations made by the surface management agency concerning unique or unusual resource values identified during land use planning or mine permit application review that may need protection from the effects of mining.

The mandatory criteria found in section 522(e) of the Surface Mining Control and Reclamation Act of 1977, as well as the alluvial valley floor criterion in section 510(b)(5) of the Act would still be applied to lands covered by existing leases by the regulatory authority when determining whether to issue a mining permit. The resource values that may be protected under the discretionary criteria based on section 522(a)(3) of the Act would be considered at that time also, and could be adequately protected through the regulatory authority's stipulation in the mine permit to afford protection of unique and unusual resource values.

Application of the unsuitability criteria to unleased lands during land use planning would continue because it has proven to be an effective mechanism to provide information for use in determining whether a coal lease should be issued for the Federal lands under study. However, for the reasons discussed above, the Department of the Interior believes that the public interest is not being served by formally applying the unsuitability criteria to lands covered by existing leases. The Department is examining different methods of conducting the Federal lands review required by section 522(d) of the Surface Mining Control and Reclamation Act with the intent of establishing unified policies and procedures that meet the requirements of the Act but avoid costly, time-consuming and duplicative procedures. The Department is soliciting public comment, not only on the existing and proposed methods, especially as they pertain to lands covered by preference right lease applications and existing leases, but also on any other methods any member of the public may wish to propose on how the Federal lands review requirement for all classes of Federal coal lands (leased, under preference right lease application or under consideration for competitive leasing) could most efficiently be satisfied.

The remaining changes in Subpart 3461 are editorial. The language that would be deleted in § 3461.0-7, Scope, is repetitive and unnecessary.

The assessment and land use planning procedures discussed in § 3461.3-1 would be clarified. This revision would state more explicitly the process for application of the criteria, exceptions and exemptions. The intent of the process is to first evaluate a coal area

for unsuitability based on all the criteria. After the results of the application of all the criteria are known, the surface management agency's authorized officer has the discretion to reevaluate any area found unsuitable in light of the exceptions and exemptions. If, during this reevaluation, it is determined that an unsuitability determination cannot be reversed by any single exception or exemption, then the reevaluation process stops and that area is dropped from further consideration. If, during the reevaluation process, an exception is found to be applicable under specific conditions to an area and the unsuitability determination would be reversed, then any subsequent lease for that area must contain the specific conditions in the form of lease stipulations.

The elimination of the last sentences of § 3461.3-2(b) and (c) concerning consultation on unsuitability assessments would remove unnecessary regulatory language that would be placed in Bureau of Land Management instruction memoranda and manuals.

Section 3461.3-3 concerning preparation of a statement of findings on the effects of Federal lands assessed as unsuitable would be deleted. This provision more appropriately applies to the requirements specified in section 522(d) of the Surface Mining Control and Reclamation Act which requires the Office of Surface Mining or regulatory authority to prepare this statement prior to the Secretary of the Interior designating specific lands as unsuitable for surface coal mining operations in response to a petition submitted in accordance with section 522(c) of the Act. The preparation of the statement earlier during land use planning or environmental analysis, at the time Federal lands may only be assessed as unsuitable, is therefore untimely.

Section 3461.5 concerning petitions to designate lands unsuitable would be deleted because it is repetitive of the Office of Surface Mining's unsuitability petition regulations in 30 CFR Part 769.

Subpart 3465—Surface Management and Protection

Section 3465.0-2, *Objectives*, would be deleted because it is unnecessary.

Section 3465.2 concerning compliance would also be deleted because it is redundant of 30 CFR Part 741.

Section 3465.3-3, renumbered § 3465.2-3, would be amended to add that grounds for suspension of a permit or license to mine may be caused by failure of the lessee or holder of a license to comply with a written notice of noncompliance issued by the Mining

Supervisor in accordance with 30 CFR Part 211 as well as the Surface Mining Officer. This change would clarify the responsibilities of the Department of the Interior to ensure coal resource recovery and protection in compliance with the requirements of the Mineral Leasing Act of 1920, as amended.

Section 3465.4 would be eliminated because alternative postmining land use is covered in 30 CFR Part 816. Section 3465.4(b) is a requirement of the National Environmental Policy Act of 1969, and is an Office of Surface Mining responsibility which does not need to be repeated here.

Section 3465.5, concerning bonding, would be deleted because it is repetitive of Subpart 3474 of this title as well as of 30 CFR Part 742. Similarly, § 3465.6, addressing conduct, completion and abandonment of operations is repetitive of rules provided elsewhere as stated.

Subpart 3471—Coal Management Provisions and Limitations

Section 3471.3-1, which applies to licenses to mine, would be moved to a more appropriate place in Subpart 3440. Section 3471.3-1, as it applies to leases, is repetitive of Subpart 3452 of this title and would be deleted.

The last sentence of § 3471.3-2(b), renumbered § 3471.3-1(b), would be deleted since the procedures for hearings regarding the protection of a bona fide purchaser of a lease do not need to be included in these regulations.

Subpart 3472—Lease Qualification Requirements

The acreage limitations and corporate qualifications statement regulations in Subpart 3472 would be changed to facilitate more fully the enforcement of subsections 27(a)(1) and (e)(1), of the Mineral Leasing Act of 1920 (30 U.S.C. 184(a)(1) and (e)(1)), in those cases where the Federal lessee is a corporation. In order to charge acreage properly under these provisions it is necessary to request more extensive statements of qualifications from corporate applicants than are presently required.

Subsection 27(e)(1) of the Mineral Leasing Act sets out the rules for charging acreage to stockholders of corporate lessees. Stockholders are chargeable with their *pro rata* share of the acreage attributed to a corporate lessee, unless they are *not* the "beneficial holders" of more than 10 percent of the stock or other instruments of ownership or control of such lessee.

Under the Department of the Interior's interpretation of subsection 27(e)(1), a parent corporation is chargeable with its

share of a subsidiary's Federal leaseholdings. Subsection 27(e)(1), subject to the 10 percent limitation, also makes a person, corporation or other entity owning stock in a parent corporation chargeable with its *pro rata* share of the acreage under leases held or controlled by that parent's subsidiary.

In order to calculate the chargeable acreage of one entity under the subsection 27(e)(1) provision, it is necessary to add: (1) The acreage embraced in an entity's direct holding or control of a lease; (2) the entity's indirect interest as a stockholder in a corporation holding a lease; and (3) the entity's other indirect interests as a stockholder in other corporations holding, owning or controlling Federal coal leases. (Solicitor's Opinion, M-36843 (Nov. 12, 1971). Also see "Limitations Respecting the Leasing of Oil Shale Deposits," 48 L.D. 635, 637 (1922)). Elements (2) and (3) are not chargeable if the stockholder's indirect beneficial interest in a lease amounts to 10 percent or less. Therefore, in a corporate chain of control, acreage may be attributed to those who, in effect, control more than 10 percent of a lease. The Department's interpretation of subsection 27(e)(1) of the Mineral Leasing Act is derived from the statutory language "or any interest which he may have * * * as a stockholder in other corporations holding, owning or controlling such leases."

Section 11(a) of the Federal Coal Leasing Amendments Act of 1976 is also relevant to acreage attribution in those cases where the corporate lessee is related to other corporations or entities. The Department interprets the changes which section 11(a) of the act made in subsection 27(a)(1) of the Mineral Leasing Act to mean that 100 percent of the acreage of a given lease must be credited to a subsidiary or affiliate of a corporation that holds or controls a lease if such subsidiary or affiliate is controlled or in common control with the corporate leaseholder (or corporate lease controller).

It is apparent from the legislative history that the phrase "controlled by or under common control with such person, association or corporation" modifies the words "subsidiary" and "affiliate" as well as "persons." 94th Cong., 1st Session 17 (1975). House Report No. 94-681, 94th Congress, 1st Session 17 (1975) does not reveal a Congressional intent to credit acreage automatically under section 11(a) of the Federal Coal Leasing Amendments Act to all corporations which are related to corporate leaseholders or lease controllers. The chargeability of an affiliate or

subsidiary of a corporate leaseholder or corporate lease controller depends on the "nature and extent of control" it exercises over a lessee or lease controller.

Enforcement of the acreage limitations in section 11(a) of the Federal Coal Leasing Amendments Act also may, in some cases, require the piercing of the corporate veil; that is, in some circumstances, the Department of the Interior must look beyond or behind the corporate entity. The logical consequence of piercing the corporate veil of a corporation which controls or is in common control with a corporate leaseholder or lease controller is to attribute 100 percent of the acreage holdings of the corporate leaseholder or lease controller to such corporation. In order to carry out the purpose of section 11(a) of the Act, the inquiry should not be limited to whether one corporation has assumed overall control of the affairs of another. It is also necessary to determine whether a corporation exercises actual control over a leaseholding corporation in the single area of acquisition and development of Federal coal leases.

To summarize, when a chain of corporate ownership is involved, the Department of the Interior's duties are twofold under subsections 27(a)(1) and 27(e)(1) of the Mineral Leasing Act. When examining a chain of corporate ownership, the first question is whether a given corporation is "controlled by or under common control" with the leaseholder or lease controlling corporation. If there is enough control of one corporation by another to justify piercing the corporate veil, related corporations in the corporate chain will be charged with acreage to the same extent which the leaseholder or lease controller is charged. If there is not enough control to justify piercing the corporate veil, then corporations in the chain of ownership should be charged in accordance with the rules that subsection 27(e)(1) sets forth for calculating indirect (stockholder's) interests.

Section 3472.1-2(b)(1), renumbered § 3472.1-3(b)(1), would be amended to clarify the Department of the Interior's responsibilities for acreage attribution in accordance with the above principles. Section 3472.2-2(c) would also be changed to require lease applicants to file qualification statements for corporations having a major stock interest (10 percent or more) in corporations owning or controlling 10 percent or more of the applicant's stock. The Department of the Interior emphasizes, however, that it has the

responsibility to charge acreage throughout corporate chains of ownership. Supplementary information may be required if, on the basis of the information an applicant supplies in its qualifications statement or for other reasons, the Department believes that there may be other entities to whom acreage must be attributed, or that attribution should occur under subsection 27(a)(1), not just subsection 27(e)(1), of the Mineral Leasing Act. This supplementary information requirement is contained in the new proposed § 3472.2-2(f).

Even though no change is being made in the alien ownership reporting requirements of § 3472.2-2(c)(5), the public is requested to comment on how the Department of the Interior can satisfy its responsibilities regarding the alien ownership provisions of the Mineral Leasing Act of 1920 without imposing unreasonable burdens on lessees and the Department.

New language in § 3472.2-2(g) would reestablish that not only corporate, but also association, partnership, guardian and individual applicants and bidders can refer to previously filed qualification statements in filing qualification papers. The revision would require a new submission of qualifications, however, if the prior reference file does not contain complete, current and accurate information.

Subpart 3473—Fees, Rental, and Royalties

Section § 3473.1-2 would be revised for clarification. This revision is designed to make the 1979 rule prospective only and to assure that the Department of the Interior and the lessee do not have to undergo the administrative cost and inconvenience of shifting accounting and payments from the Geological Survey to the Bureau of Land Management on the many nonproducing coal leases issued prior to the Federal Coal Leasing Amendments Act of 1976 which were in "producing status," that is, which were beyond the sixth lease year in which payments were, according to the lease terms, to be made to the Geological Survey. No readjustment in payments and accounting for those leases was intended; this revision would make that clear.

A revision in the fee § 3473.2-2(a)(3) would conform that section to the editorial revisions in Subpart 3453 on transfers.

A new § 3473.3-1(d) would be added to eliminate problems arising from lease readjustment procedures on leases issued prior to the effective date of the Federal Coal Leasing Amendments Act

of 1976 and on those leases issued afterward. Rentals paid on pre-Federal Coal Leasing Amendments Act leases may be credited against royalties, and rental paid on new and readjusted leases may not be credited against royalties. These procedures create confusion as to what extent the rentals for the lease year which straddles the readjustment date may be credited against royalties, and result in a deficiency in the advance rental paid by the lessee. The proposed solution is the new § 3473.3-1(d).

Sections § 3473.3-2(b)(2) through (4) are proposed for deletion from these regulations because they will be contained in the Department of Energy proposed 10 CFR Part 378 rules. Cross-reference is provided in the renumbered § 3473.3-2(b).

Section § 3473.3-2(c) would be amended to state that net profit shares or other interests shall not be considered overriding royalty interests unless the net profit shares or other interests are calculated directly on the basis of the amount of production. The public is requested to comment on this net profit shares amendment as well as the need to restrict overriding royalties.

Section § 3473.3-2(d)(1) would be amended to reflect the Department of the Interior's intention to promote coal production by fully retaining the Secretary's authority under section 39 of the Mineral Leasing Act to reduce effective royalty rates below the statutory and regulatory minimums. The relationship between this authority and the provisions for setting the lease royalty rate at lease issuance or readjustment is discussed in detail in Solicitor's Opinion M-36920, 87 I.D. 69 (December 11, 1979), "Reduction of Production Royalties Below Statutory Minimum Rates." This revision would be accomplished by deleting the phrase "except that in no case shall the royalty be reduced below 5 percent for underground coal."

Section § 3473.3-2(d)(2) would be eliminated because the requirements for royalty rate reductions are contained in 30 CFR 211.63, as cross-referenced in the last sentence of the proposed revision in § 3473.3-2(d)(1), renumbered § 3473.3-2(d).

The proposed revisions to § 3473.4 would clarify the suspension of operations requirements by referring to the appropriate section of the Geological Survey 30 CFR 211 rules.

Subpart 3474—bonds

Section § 3474.1(a)(2) and 3474.1(c) would be amended to clarify that a single logical mining unit (LMU) bond

covering the Federal leases within the same logical mining unit could be used.

The proposed first sentence of § 3474.2(a) and amendments to § 3474.3(b) would assure that the Federal lease bond will cover reclamation within a permit area only in those uncommon cases where the regulatory authority exercises interim program authority that does not provide bonding authority apart from the Federal lease bond. When permanent programs are in place for Federal lands (by virtue of the approval of a state program and a cooperative agreement governing Federal lands in the state, the adoption of a Federal program for that state, or the adoption of a Federal lands program for a state with an approved state program but no cooperative agreement) this use of lease bond authority to secure reclamation obligations will no longer be necessary.

A new § 3474.2(c) would be added as a technical bonding provision to further clarify that a single logical mining unit bond covering the Federal leases in a logical mining unit could be used.

Subpart 3475—Lease Terms

A new § 3475.1 would be added making provision for the lease form used for Federal coal leases. A revised lease form will be developed after these regulations are final. This revised form will reflect the changes in the regulations as well as the numerous comments received to date on the December 18, 1980, Federal Register (45 FR 83333) request for comments on the proposed lease form. The Department of the Interior reserves the option, based on the effect that the final coal regulations may have on the lease form, to request further public comments prior to implementation of a final lease form.

The diligent development and continued operation provisions set forth in § 3475.4, renumbered § 3475.5, would be deleted in their entirety and cross-referenced to 10 CFR Part 378. In accordance with the Department of Energy Organization Act of 1977, the Department of Energy is the authority responsible for diligence rules. The deletion from the 43 CFR Part 3400 rules would not be effective until the Department of Energy rules are final.

The criteria and specifications for a logical mining unit, as set forth in § 3475.5, renumbered § 3475.6, would be eliminated and cross-referenced instead to the 30 CFR Part 211 rules. Section 3475.5(c), renumbered § 3475.6(c), would be changed to state that the holder of a lease issued or readjusted between May 7, 1976, and the effective date of these regulations as final rulemaking whose

lease is considered to be a logical mining unit may file a request to the authorized officer for removal of this provision from the lease.

The primary authors of this proposed rulemaking are Patrick H. Geehan and Walter Rewinski, Division of Coal, Tar Sands and Oil Shale, Bureau of Land Management, assisted by Larry McBride, Division of Energy and Resources, Office of the Solicitor, Department of the Interior, and other Bureau of Land Management and Department of the Interior staff.

It is hereby determined that these rules do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. An environmental assessment has been prepared and a finding of no significant impact has been determined for these proposed amendments to the 43 CFR Part 3400 and 30 CFR Part 211 regulations for the Federal coal program. The environmental assessment is available upon request from the Division of Coal, Tar Sands and Oil Shale, Bureau of Land Management, Washington, D.C. 20240.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354).

The information collection requirements contained in 43 CFR Part 3400 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands as amended (30 U.S.C. 351-359 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) and the Multiple Mineral Development Act (30 U.S.C. 521-531 et seq.), it is proposed to amend Group 3400, Subchapter, C, Chapter II, Title 43 of the Code of Federal Regulations as set out below:

PART 3400—COAL MANAGEMENT—GENERAL

§ 3400.0-4 [Removed]

1. Section 3400.0-4 is removed in its entirety.

§ 3400.0-5 [Amended]

2. Section 3400.0-5 is amended by:

- (a) Amending paragraph (d) by removing the phrase "logical mining unit" and replacing it with the phrase "mining operation";
- (b) Amending paragraph (f) by removing the word "nontransferable";
- (c) Removing paragraphs (h), (i), (j) and (k) in their entirety;
- (d) Renumbering paragraph (l) as paragraph (h);
- (e) Removing paragraph (m) in its entirety;
- (f) Renumbering paragraphs (n) and (o) as paragraphs (i) and (j);
- (g) Renumbering paragraph (p) as paragraph (k) and amending it by inserting after the phrase "characteristic of" the word "Federal" and by removing the phrase "above and below the deposits, or" and replacing it with the phrase "below the deposits, overburden and strata above the deposits and" and removing the last word "deposit" and replacing it with the word "deposits";
- (h) Renumbering paragraph (q) as paragraph (l);
- (i) Renumbering paragraph (r) as paragraph (m) and revising it as follows:

(m) "Exploration plan" means, in relation to an exploration license, a detailed plan to conduct exploration: it shows the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads and reclamation and abandonment procedures to be followed upon completion of operations.

(j) Renumbering paragraph (s) as paragraph (n);

(k) Renumbering paragraph (t) as paragraph (o) and amending it by removing the phrase "mineral estates or coal estates underlying private surface," and replacing it with the phrase "surface estate, mineral estate and coal estate.";

(l) Renumbering paragraph (u) as paragraph (p);

(m) Renumbering paragraph (v) as paragraph (q) and amending it by adding at the end "Stock ownership or stock control does not constitute an interest in a lease within the meaning of this definition. Attribution of acreage to stock ownership interests in leases is covered by § 3472.1-3(b) of this title.";

(n) Removing paragraphs (w) and (x) in their entirety;

(o) Renumbering paragraph (y) as paragraph (r) and revising it as follows:

(r) "Lease" means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which grants the exclusive right to explore for and extract coal. In provisions of this group that also refer to Federal leases for minerals other than coal, the term "Federal coal lease" may apply.

(p) Renumbering paragraph (z) as paragraph (s) and amending it by inserting after the phrase "reclamation operations" the phrase "under a permit";

(q) Renumbering paragraphs (aa) and (bb) as paragraphs (t) and (u);

(r) Renumbering paragraph (cc) as paragraph (v) and revising it as follows:

(v) "Logical Mining Unit" or "(LMU)" means an area of land that can be developed and mined for coal in an efficient, economical and orderly manner with due regard for the conservation of coal reserves and other resources. An LMU may consist of 1 or more leases and may include intervening or adjacent non-Federal lands, but all lands in an LMU shall be contiguous, under the effective control of a single operator or lessee, and capable of being developed and operated as a unified operation with complete extraction of the LMU reserves within 40 years after production of coal commences. No LMU shall exceed 25,000 acres, including both Federal and non-Federal lands.

(s) Renumbering paragraph (dd) as paragraph (w) and revising it as follows:

(w) "Logical Mining Unit reserves" means the sum of estimated Federal and non-Federal recoverable coal reserves in the LMU. The LMU reserves are those estimated as of the effective date of the LMU approval, except that the amount of LMU reserves may be adjusted by the Mining Supervisor as provided in 30 CFR 211.80.

(t) Renumbering paragraph (ee) as paragraph (x) and revising it as follows:

(x) "Maximum economic recovery" or "MER" means that, after safety factors are taken into account, all portions of the coal deposit within a Federal coal lease shall be mined that have a private incremental cost of recovery (including

reclamation costs) less than or equal to the market value of the coal.

(u) Removing paragraph (ff) in its entirety;

(v) Renumbering paragraph (gg) as paragraph (y);

(w) Renumbering paragraph (hh) as paragraph (z) and revising it as follows:

(z) "Mining plan" means a resource recovery and protection plan as described in 30 CFR 211.10(b).

(x) Renumbering paragraph (ii) as paragraph (aa) and revising it as follows:

(aa) "Mining Supervisor" means the District Mining Supervisor, Conservation Division, U.S. Geological Survey.

(y) Renumbering paragraph (jj) as paragraph (bb);

(z) Renumbering paragraph (kk) as paragraph (cc) and amending it by inserting before the word "licensee" in the two places it appears, the word "exploration";

(aa) Removing paragraph (ll) in its entirety;

(bb) Renumbering paragraph (mm) as paragraph (dd) and revising it as follows:

(dd) "Permit" means the document that authorizes surface coal mining and reclamation operations on Federal lands, after approval of a mining plan and a reclamation plan. A permit may be issued either by the Director of the Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR Chapter VII or, where a cooperative agreement pursuant to section 523 of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1273) has been executed, by the state regulatory authority (30 CFR Part 741).

(cc) Renumbering paragraphs (nn) and (oo) as paragraphs (ee) and (ff);

(dd) Renumbering paragraph (pp) as paragraph (gg) and amending it by inserting between the word "persons" and the closing of the parenthesis the words "otherwise meeting the requirements of this section";

(ee) Renumbering paragraph (qq) as paragraph (hh) and amending it by inserting after the word "means" the word "the";

(ff) Renumbering paragraph (rr) as paragraph (ii) and amending it by removing the phrase "or his authorized representative";

(gg) Renumbering paragraphs (ss), (tt), (uu) and (vv) as paragraphs (jj), (kk), (ll) and (mm);

(hh) Renumbering paragraph (ww) as paragraph (nn) and amending it by removing the period at the end and adding the phrase ", and, in the case of private surface over Federal coal, the Bureau of Land Management, except in areas designated as National Grasslands, where it means the Forest Service";

(ii) Renumbering paragraph (xx) as paragraph (oo) and revising it as follows:

(oo) "Surface Mining Officer" means the regulatory authority as defined in 30 CFR Chapter VII.

(jj) Renumbering paragraphs (yy) and (zz) as paragraphs (pp) and (qq).

§ 3400.1 [Amended]

3. Section 3400.1 is amended by:

(a) Inserting the figure "(a)" before the existing text of the section and removing the word "prospecting" and replacing it with the word "exploration"; and

(b) Adding a new paragraph (b) as follows:

(b) The presence of deposits of other minerals of the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals shall not preclude the granting of an exploration license, a license to mine or a lease for the exploration, development or production of coal deposits on the same lands with suitable stipulations for simultaneous operations.

§ 3400.3-4 [Amended]

4. Section 3400.3-4 is amended by removing the figure "(t)" where it appears and replacing it with the figure "(o)".

§ 3400.4 [Amended]

5. Section 3400.4 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3420.3-1(a)" where it appears in the first sentence and replacing it with the figure "§ 3400.5", by inserting in the first sentence after the phrase "the Governor of each State" the phrase "included in the region", by removing in the third sentence the word "chairman" and replacing it with the word "chairperson", and by removing in the fourth sentence the phrase "on more than" and replacing them with the phrase "of only";

(b) Revising paragraph (b) as follows:

(b) Each regional coal team shall guide all phases of the coal activity planning process described in §§ 3420.3 through 3420.3-4 of this title which relate to competitive leasing in the region.

(c) Removing paragraph (c) in its entirety;

(d) Renumbering paragraph (d) as paragraph (c) and removing the word "concerning" and replacing it with the word "including";

(e) Renumbering paragraph (e) as paragraph (d) and revising it as follows:

(d) Additional representatives of state and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at any time at the request of the team chairperson. Participation may be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct surface management responsibilities in areas potentially affected by coal management decisions. However, at every point in the deliberations, the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

(f) Renumbering paragraph (f) as paragraph (e); and

(g) Adding a new paragraph (f) as follows:

(f) The regional coal shall function under the general provisions of the cooperative procedures of subpart 1784 of this title.

6. A new § 3400.5 is added as follows:

§ 3400.5 Coal production regions.

The Bureau of Land Management shall establish by publication in the Federal Register coal production regions. A coal production region may be changed or its boundaries altered by publication of a notice of change in the Federal Register. Coal production regions shall be used for establishing regional leasing levels under § 3420.2 of this title and for other purposes of the coal management program.

PART 3410—EXPLORATION LICENSES

§ 3410.0-4 [Removed]

7. Section 3410.0-4 is removed in its entirety.

§ 3410.1-2 [Amended]

8. Section 3410.1-2(b) is amended by removing the words "for other than

commercial purposes" where they appear.

§ 3410.2-1 [Amended]

9. Section 3410.2-1 is amended by:

- (a) Removing paragraph (b) in its entirety;
- (b) Renumbering paragraph (c) as paragraph (b);
- (c) Renumbering paragraph (d) as paragraph (c) and amending subparagraph (1) of that paragraph by removing the period at the end of the second sentence and adding the phrase "and shall contain the location of the Geological Survey and Bureau of Land Management offices in which the application shall be available for inspection."; and
- (d) Renumbering paragraph (e) as paragraph (d).

10. Section 3410.2-2 is revised as follows:

§ 3410.2-2 Environmental analysis.

(a) Before an exploration license may be issued, the authorized officer, in coordination with the Geological Survey, shall prepare an environmental assessment of the potential effects of the proposed exploration on the natural and socio-economic environment of the affected area. No exploration license shall be issued if the exploration would:

- (1) result in disturbance that would cause significant and lasting degradation to the lands or injury to improvements, or in any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quantity, quality or hydrologic conditions of the coal deposits; or
- (2) jeopardize the continued existence of a threatened or endangered species of fauna or flora or destroy or cause adverse modification to its critical habitat. No exploration license shall be issued until after compliance with sections 105 and 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) with respect to any cultural resources which might be affected by any activity under the exploration license.

(b) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the lands disturbed by the exploration.

§ 3410.2-3 and 3410.2-4 [Removed]

11. Sections 3410.2-3 and 3410.2-4 are removed in their entirety.

§ 3410.2-5 Redesignated as § 3410.2-3

12. Section 3410.2-5 is renumbered § 3410.2-3.

§ 3410.2-6 [Removed]

13. Section 3410.2-6 is removed in its entirety.

§ 3410.3-1 [Amended]

14. Section 3410.3-1 is amended by:

- (a) Amending paragraph (e) by removing the word "revoked" and replacing it with the word "cancelled";
- (b) Amending paragraph (f) by removing in the first sentence the phrase "with the concurrence of the authorized officer, and, where appropriate, the surface management agency," and removing the second and third sentences of the paragraph;
- (c) Amending paragraph (g) by revising subparagraphs (1) and (2) as follows:

(g) * * *

(1) The authorized officer may adjust the terms and conditions of the exploration license, or

(2) The Mining Supervisor may direct adjustment in or approve modification of the exploration plan. If the licensee does not concur in the adjustment of the terms and conditions of the exploration license and exploration plan, he/she may, under 43 CFR Part 4, appeal the decision modifying the license, or he/she may relinquish the exploration license.

* * *

(d) Amending paragraph (h) by deleting the figure "§ 3410.3-1" and replacing it with the phrase "this section".

§ 3410.3-2 [Amended]

15. Section 3410.3-2 is amended by removing the figure "(a)".

§ 3410.3-4 [Removed]

16. Section 3410.3-4 is removed in its entirety.

§ 3410.3-5 Redesignated as § 3410.3-4 and Amended

17. Section 3410.3-5 is renumbered 3410.3-4 and is amended by:

(a) Amending paragraph (b) by removing the phrase "and, where appropriate, the surface management agency and the surface owner," by removing the word "insure" and replacing it with the word "ensure", by removing the words "or bonds", by inserting after the word "sufficient" the phrase "; (1)", by removing the phrase "exploration plan and regulations" and replacing it with the phrase "and exploration plan" and by deleting the period at the end of the first sentence and adding the words "; and (2) in the absence of an agreement between the exploration licensee and the surface owner so providing, to assure

compensation for damages to surface improvements made by surface owners where an exploration license embraces such lands."; and

(b) Revising Paragraph (c) as follows:

(c) Upon completion of exploration and reclamation activities that are in compliance with the terms and conditions of the exploration license, the exploration plan and the regulations, or upon discontinuance of exploration operations and completion of needed reclamation to the satisfaction of the authorized officer, and where appropriate, the surface management agency, the authorized officer shall, with the concurrence of the Mining Supervisor, terminate the period of liability of the bond.

18. Section 3410.4 is revised as follows:

§ 3410.4 Collection and submission of data.

The licensee shall furnish the Mining Supervisor copies of all data (including, but not limited to, geological, geophysical and core drilling analyses) obtained during exploration in a form requested by the Mining Supervisor. All data shall be considered confidential and not made public until the areas involved have been leased or until the Mining Supervisor determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. (30 CFR 211.6, 43 CFR 2.20)

§ 3410.5 [Amended]

19. Section 3410.5 is amended by:

- (a) Removing paragraph (a) in its entirety;
- (b) Renumbering paragraph (b) as paragraph (a); and
- (c) Renumbering paragraph (c) as paragraph (b) and removing all after the word "regulations".

PART 3420—COMPETITIVE LEASING

20. Section 3420.0-2 is revised as follows:

§ 3420.0-2 Objectives.

The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental analysis processes; to promote the timely and orderly development of publicly owned coal resources; to ensure that coal deposits are leased at their fair market value; and to ensure that coal deposits are developed in consultation, cooperation

and coordination with the public, state and local governments, Indian tribes and involved Federal agencies.

§ 3420.0-6 [Removed]

21. Section 3420.0-6 is removed in its entirety.

§ 3420.1-1 [Removed]

22. Section 3420.1-1 is removed in its entirety.

§ 3420.1-2 Redesignated as § 3420.1-1

23. Section 3420.1-2 is renumbered § 3420.1-1.

§ 3420.1-3 Redesignated as § 3420.1-2

24. Section 3420.1-3 is renumbered section 3420.1-2 and is revised as follows:

§ 3420.1-2 Call for coal resource information.

(a) Prior to initiation or update of a land use plan or land use analysis, the authorized officer shall formally solicit, through a Call for Coal Resource Information, indications of interest and information on coal resource development potential for lands in the planning unit. Industry, State and local governments and the general public may submit information on lands that should be considered for coal leasing, including statements describing why the lands should be considered for leasing.

(b) Proprietary data marked as confidential may be submitted in response to the Call for Coal Resource Information. Data marked as confidential shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(c) The Call for Coal Resource Information may be combined with the notice of intent to conduct land use planning published in accordance with § 1601.3(g) of this title or with the issue identification process in accordance with § 1601.5-1 of this title.

§ 3420.1-4 Redesignated as § 3420.1-3 and Amended

25. Section 3420.1-4 is renumbered section 3420.1-3 and is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3420.4" and replacing it with the figure "§ 3420.3";

(b) Amending paragraph (b)(1)(ii) by removing the phrase "evidence of qualification (43 CFR 3472.2-5(a))" and replacing it with the phrase "the information specified in §§ 3472.2-5(a) (1) and (2) of this title" and by removing the period at the end and adding the sentence "The information specified in § 3472.2-5(a) (3) and (4) of this title shall be submitted within 60 days after submission of an expression of leasing

interest or lease bid if no expression of leasing interest is made."; and

(c) Amending paragraph (b)(1)(iii) by removing the figure "§ 3420.4-2" and replacing it with the figure "§ 3420.3-2".

§ 3420.1-5 Redesignated as § 3420.1-4 and Amended

26. Section 3420.1-5 is renumbered § 3420.1-4 and is amended by:

(a) Revising paragraphs (b) (1), (2) and (3) as follows:

* * *

(b)(1) The Bureau of Land Management shall prepare comprehensive land use plans and land use analyses for lands it administers in conformance with 43 CFR Part 1600.

(2) The Department of Agriculture or any other Federal agency with surface management authority over lands subject to leasing shall prepare comprehensive land use plans or land use analyses for lands it administers.

(3) The Secretary may lease in any area where it is found either that there is no Federal interest in the surface or that the coal deposits in an area are insufficient to justify the costs of a Federal land use plan upon completion of a land use analysis in accordance with 43 CFR Part 1600.

* * *

(b) Removing paragraphs (c), (d) and (e) in their entirety;

(c) Renumbering paragraph (f) as paragraph (c) and amending it by removing the word "petition" and replacing it with the word "request" and by removing the phrase "Office for" and replacing it with the phrase "Office to prepare"; and

(d) Adding new paragraphs (d) through (g) as follows:

* * *

(d) A comprehensive land use plan or land use analysis shall contain an estimate of the amount of coal recoverable by either surface or underground mining operations or both.

(1) The major land use planning decision concerning the coal resource shall be the identification of areas acceptable for further consideration for leasing.

(2) Those areas that have development potential shall be subject to evaluation for leasing in land use planning (§ 3420.1-2). The Geological Survey shall estimate coal development potential for the surface management agency. Coal companies, State and local governments and the general public are encouraged to submit information to the Geological Survey at any time in connection with such development potential determinations. Coal companies, State and local governments

and members of the general public may also submit nonconfidential coal geology and economic data during the inventory phase of planning to the Bureau of Land Management office conducting the land use planning. Where such information is determined to indicate development potential for an area, the area shall be included in the land use planning for evaluation for coal leasing.

(e) The authorized officer shall, using the unsuitability criteria and procedures set out in Subpart 3461 of this title, review Federal lands to assess where there are areas unsuitable for all or certain stipulated methods of mining. The unsuitability assessment shall be consistent with any decision of the Office of Surface Mining Reclamation and Enforcement to designate lands unsuitable or to terminate a designation in response to a petition.

(f) Multiple land use decisions may be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values of a locally important or unique nature not included in the unsuitability criteria discussed in paragraph (e) of this section.

(g)(1) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (gg) (1) and (2) of § 3400.0-5 of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.

(2) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground techniques if there are no acceptable alternative areas available to meet the regional leasing level.

(3) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:

(i) The number of surface owners who have expressed their preference against mining by other than underground techniques is reduced below a significant number because such surface owners have given written consent for such mining or have transferred ownership to unqualified surface owners; and

(ii) The land use plan is amended accordingly.

§§ 3420.2, 3420.2-1, 3420.2-2, and 3420.2-3 (Removed)

27. Sections 3420.2, 3420.2-1, 3420.2-2 and 3420.2-3 are removed in their entirety.

§ 3420.2-4 Redesignated as § 3420.1-5

28. Section 3420.2-4 is renumbered 3420.1-5 and is revised as follows:

§ 3420.1-5 Hearing requirements.

After public notice, the Bureau of Land Management shall conduct a public hearing on the proposed comprehensive land use plan or land use analysis if it involves the potential for coal leasing before it is adopted if such a hearing is requested by any person who is or may be adversely affected by the adoption of the plan. A hearing conducted under Group 1600 of this chapter shall fulfill this requirement.

§ 3420.2-5 Redesignated as § 3420.1-6

29. Section 3420.2-5 is renumbered 3420.1-6.

§ 3420.2-6 Redesignated as § 3420.1-7 and Amended

30. Section 3420.2-6 is renumbered 3420.1-7 and is amended by removing in the first sentence the phrase "any formal" and replacing it with the word "an" and by removing from the second sentence the phrase "to obtain its recommendations concerning the unsuitability assessment."

§ 3420.2-7 Redesignated as § 3420.1-8 and Amended

31. Section 3420.2-7 is renumbered 3420.1-8 and is amended by removing the figure "§ 3420.4" and replacing it with the figure "§ 3420.3".

32. A new § 3420.2 is added to read:

§ 3420.2 Regional leasing levels.

This section sets out the process to be followed in establishing regional leasing levels. Regional leasing levels shall be established by the Secretary. The Secretary shall particularly rely upon the advice and assistance of affected State Governors in ensuring that leasing levels have properly considered social, environmental and economic impacts and constraints.

(a) The regional coal teams shall be the forum through which initial leasing level recommendations are transmitted to the Secretary. Initial leasing level recommendations shall be developed as follows:

(1) The appropriate Bureau of Land Management State Director on the regional coal team, as designated by the regional coal team chairperson, shall prepare a broadly stated range of initial leasing levels for the region. This range of initial leasing levels shall be based on information available to the State Director, including land use planning data, the results of the call for coal resource information held under § 3420.1-2 of this title, the results of the call for expressions of leasing interest held under § 3420.3-2 of this title and other pertinent factors;

(2) This initial range of leasing levels shall be made available to the other members of the regional coal team for review and comment. This review shall be designed to ensure full consideration of all relevant social, environmental and economic factors of which the Secretary should be aware in setting leasing levels;

(3) Governors of affected States shall be requested by the regional coal team chairperson to provide comments and recommendations concerning the leasing levels through the Governor's representatives on the regional coal team. Governors may use any methodologies, systems or procedures available to determine their recommendations;

(4) The regional coal team chairperson shall call upon the team members to present their findings and recommendations on the initial leasing levels. The chairperson shall refer the members' recommendations to an appropriate Bureau State Director serving on the team. The State Director shall: (i) Ensure the recommendations are in an appropriate format; (ii) add any additional information from the Bureau of Land Management and the Geological Survey data sources which may be available and pertinent to leasing level decision-making; (iii) address any questions and clarify any issues raised by the members' recommendations; and (iv) outline any additional alternative leasing levels. The regional coal team shall consider the State Director's review and shall transmit to the Secretary alternative leasing levels presented in ranges of tons to be offered for lease. All Governor's comments and recommendations shall also be transmitted to the Secretary, without change, as appendices to the team transmittal; and

(5) The regional coal team transmittal to the Secretary shall be made through the Director, who may provide additional data and recommendations, but only as separate documentation.

(b) The Secretary, upon receipt of the regional coal team transmittal, shall initiate consultations, in writing, with the Secretary of Energy, the Attorney General and affected Indian tribes. The Secretary shall establish leasing levels by region for the purposes of approximating the amount of coal to be offered through proposed lease sale schedules after consideration of potential policy conflicts or problems concerning, but not limited to:

(1) The Department's responsibility for the management, regulation and conservation of natural resources; and

(2) The capabilities of Federal lands and Federal coal resources to meet the proposed leasing levels, and the contributions State and privately owned coal lands can make.

(c) Leasing levels may be based on the following factors:

(1) Advice from Governors of affected States as expressed through the regional coal team;

(2) The potential economic, social and environmental effects of coal leasing on the region, including recommendations from affected Indian tribes;

(3) Expressed industry interest in coal development in the region and indications of the demand for coal reserves;

(4) Expressed interests for special opportunity sales;

(5) Expected production from existing Federal coal leases and non-Federal coal holdings;

(6) The level of competition within the region and recommendations from the Department of Justice;

(7) Department of Energy production goals and projections of future demand for Federal coal;

(8) Consideration of national energy needs; and

(9) Other pertinent factors.

(d) Prior to determining a final leasing level, the Secretary shall consult with the Governors of affected States to obtain final comments and recommendations. The Secretary shall then establish a final leasing level for the proposed coal lease sale.

(e) The levels shall be established for each coal production region where activity planning is conducted under the provisions of § 3420.3 of this title. The levels shall be developed separately for each region, but levels for 2 or more regions may be developed at the same time as the Secretary deems

appropriate. Leasing levels may be stated in terms of a range of values.

(f) The leasing levels established for any given region shall become the basis for the proposed action for study in the regional coal lease sale environmental impact statement prepared pursuant to § 3420.3-4 of this title. The Secretary's final decision on which coal lease tracts, if any, within a region to offer for sale, and the schedule for the offering of such tracts shall not be constrained by the established leasing levels; but rather shall be based on all information at the Secretary's disposal at the time of the decision.

§§ 3420.3, 3420.3-1, 3420.3-2, 3420.3-3, and 3420.3-4 [Removed]

33. Sections 3420.3, 3420.3-1, 3420.3-2, 3420.3-3 and 3420.3-4 are removed in their entirety.

§ 3420.4 Redesignated as § 3420.3

34. Section 3420.4 is renumbered § 3420.3.

§ 3420.4-1 Redesignated as § 3420.3-1 and Amended

35. Section 3420.4-1 is renumbered § 3420.3-1 and is amended by:

(a) Amending paragraph (a) by inserting after the word "ranking," in the first sentence the word "analyzing," and by removing the figure "§ 3420.1-5" in the second sentence and replacing it with the figure "§ 3420.1-4";

(b) Amending paragraph (b) by removing the words "shall, upon verification" and replacing them with the words "shall, upon verification"; and

(c) Adding a new paragraph (c) as follows:

(c) Each regional coal team established under § 3400.4 of this title shall:

(1) Guide tract delineation and preparation of site specific analyses of delineated tracts;

(2) Rank delineated tracts, select tracts that meet the leasing level established by the Secretary, and identify all alternative tract combinations to be analyzed in the regional lease sale environmental impact statement;

(3) Guide the preparation of the regional lease sale environmental impact statement; and

(4) Recommend a regional coal lease sale schedule to the Director.

§ 3420.4-2 Redesignated as § 3420.3-2 and Amended

36. Section 3420.4-2 is renumbered § 3420.3-2 and is amended by:

(a) Amending paragraph (a) by removing in the first sentence the figure "§ 3420.1-5" and replacing it with the

figure "§ 3420.1-4" and by removing the last sentence of the paragraph in its entirety;

(b) Amending paragraph (b) by removing the second sentence of the paragraph in its entirety;

(c) Removing paragraphs (c), (d) and (e) in their entirety; and

(d) Renumbering paragraph (f) as paragraph (c) and amending it by adding at the end of the paragraph a new sentence "Data which are considered proprietary shall not be submitted as part of an expression of leasing interest."

§ 3420.4-3 Redesignated as § 3420.3-3 and Amended

37. Section 3420.4-3 is renumbered § 3420.3-3 and is amended by:

(a) Revising paragraph (a) as follows:

(a) Tracts may be delineated in any areas acceptable for further consideration for leasing whether or not expressions of leasing interest have been received for those areas.

(b) Removing paragraphs (b) and (c) in their entirety;

(c) Renumbering paragraph (d) as paragraph (b) and amending it by removing the figure "§ 3420.1-4" and replacing it with the figure "§ 3420.1-3";

(d) Renumbering paragraph (e) as paragraph (c) and amending it by removing the figure "§ 3420.1-4" and replacing it with the figure "§ 3420.1-3";

(e) Renumbering paragraph (f) as paragraph (d) and amending it by removing the phrase "3435, 3436 and 3437" where it appears in the parenthesis and replacing it with the phrase "3435 and 3436";

(f) Renumbering paragraph (g) as paragraph (e) and amending it by removing from the first sentence the word "preliminary"; and

(g) Removing paragraph (h) in its entirety.

§ 3420.4-4 Redesignated as § 3420.3-4.

38. Section 3420.4-4 is renumbered 3420.3-4 and is revised to read:

§ 3420.3-4 Regional tract ranking, selection, environmental analysis and scheduling.

(a)(1) Upon completion of tract delineation and preparation of the tract profiles, the regional coal team shall rank the tracts in classes of high, medium or low desirability for coal leasing. Three major categories of consideration shall be used in tract ranking: coal economics; impacts on the natural environment; and socioeconomic impacts. The subfactors to be considered under each category shall be

those determined by the regional coal team as appropriate for that region, and shall be published in the regional lease sale environmental impact statement required by this section. Tracts may also be ranked for other coal management purposes, such as emergency leasing under subpart 3425 of this title or exchanges under Subparts 3435 and 3436 of this title.

(2) The regional coal team may modify tract boundaries being ranked, if appropriate, to reflect additional information.

(3) In ranking tracts, the regional coal team shall solicit the recommendations of the Federal and State agencies having appropriate expertise, including the Geological Survey, the Fish and Wildlife Service and the Federal surface management agency, if other than the Bureau of Land Management.

(4) Where Federal leasing decisions are likely to have impacts on lands held in trust for an Indian tribe, the regional coal team shall solicit the recommendations of the tribe and the Bureau of Indian Affairs.

(b)(1) Upon completion of tract ranking, the regional coal team shall select at least 1 combination of tracts that approximates the regional leasing level. The team may also select tract combinations representing alternative leasing levels.

(2) The regional coal team may adjust the tract ranking and select tracts to reflect considerations including: (i) the compatibility of coal quality, coal type and market needs; (ii) environmental and socioeconomic impacts; (iii) the compatibility of reserve size and demand distribution for tracts; (iv) public opinion; (v) avoidance of future emergency lease situations; and (iv) special leasing opportunity requirements.

(c) After tract ranking and selection, a regional lease sale environmental impact statement on all alternative tract combinations shall be prepared in accordance with the provisions of the National Environmental Policy Act. The statement shall consider both:

(1) The site-specific potential environmental impacts of each tract being considered for lease sale; and

(2) The intraregional cumulative environmental impacts of the proposed leasing action and alternatives, and other coal and noncoal development activities.

(d) The results of the ranking and selection process, including the tract rankings, the tract selected and the list of ranking criteria used shall be published in the regional lease sale environmental impact statement

required by paragraph (c) of this section. Detailed information on each of the tracts shall be available for inspection in the Bureau of Land Management State offices that have jurisdiction over lands within the coal production region (See 43 CFR Subpart 1821).

(e) Public hearings shall be held in the region following the release of the draft regional lease sale environmental impact statement to announce and discuss the results of the ranking and selection process and the potential impacts, including proposed mitigation measures.

(f) Upon the close of the comment period on the draft environmental impact statement, the regional coal team shall analyze the comments and make any appropriate revisions in the tract ranking and selection. The final regional lease sale environmental impact statement shall reflect such revisions.

(g) Upon completion and release of the final regional lease sale environmental impact statement, the regional coal team shall recommend specific tracts for lease sale and a lease sale schedule. The chairperson shall submit the recommendations to the Director. Any disagreement as to the recommendation among the team shall be documented and submitted by the chairperson along with the team recommendation. The Director shall submit the final regional environmental impact statement to the Secretary for his/her decision, together with the recommendation of the team and any recommendations the Director may wish to make.

(h) The tract ranking, selection and scheduling process shall normally be repeated every 4 years with a revision performed every 2 years, if needed. The Secretary may, in consultation with the Governor(s) of the affected State(s) and surface management agencies, initiate or postpone the process to respond to considerations such as major land use planning updates, new preliminary tract delineations and increases in the demand for coal reserves.

§§ 3420.4-5 and 3420.4-6 [Removed]

39. Sections 3420.4-5 and 3420.4-6 are removed in their entirety.

§ 3420.5 Redesignated as § 3420.4

40. Section 3420.5 is renumbered § 3420.4.

§ 3420.5-1 Redesignated as § 3420.4-1 and Amended

41. Section 3420.5-1 is renumbered § 3420.4-1 and is amended by removing the phrase "§§ 3420.5-2 through 3420.5-5" and replacing it with the phrase "§§ 3420.4-2 through 3420.4-5".

§ 3420.5-2 Redesignated as § 3420.4-2

42. Section 3420.5-2 is renumbered § 3420.4-2.

§ 3420.5-3 Redesignated as § 3420.4-3 and Amended

43. Section 3420.5-3 is renumbered § 3420.4-3 and is amended by revising the second sentence of paragraph (a) to read "The Secretary shall give the Governor 30 days to comment before adopting a regional lease sale schedule or, for lease applications, before publishing a notice of sale for any tract within the State."

§ 3420.5-4 Redesignated as § 3420.4-4 and Amended

44. Section 3420.5-4 is renumbered 3420.4-4 and is amended by revising the second sentence to read "The Secretary shall give the tribe 30 days in which to comment prior to adopting a lease sale schedule."

§ 3420.5-5 Redesignated as § 3420.4-5 and Amended

45. Section 3420.5-5 is § 3420.4-5 and is amended by revising the second sentence to read "The Secretary shall provide 30 days in which the Attorney General may advise the Secretary prior to adopting a lease schedule."

§§ 3420.6, 3420.6-1 and 3420.6-2 [Removed]

46. Sections 3420.6, 3420.6-1 and 3420.6-2 are removed in their entirety.

§ 3420.7 Redesignated as § 3420.5

47. Section 3420.7 is renumbered § 3420.5.

§ 3420.7-1 Redesignated as § 3420.5-1 and Amended

48. Section 3420.7-1 is renumbered § 3420.5-1 and is amended by revising the first sentence to read "Following completion of the requirements of §§ 3420.3 and 3420.4 of this title, the Secretary shall announce the adoption of a final regional lease sale schedule."

§ 3420.7-2 Redesignated as § 3420.5-2 and Amended

49. Section 3420.7-2 is renumbered § 3420.5-2 and is amended by:

(a) Amending the first sentence of paragraph (a) by removing the figure "3420.5" and replacing it with the figure "§ 3420.4" and by removing all after the word "title" where it appears; and

(b) Amending paragraph (b) by removing the figure "§ 3420.4-4" and replacing it with the figure "§ 3420.3-4".

50. Section 3422.1 is revised as follows:

§ 3422.1 Fair market value and maximum economic recovery.

(a) Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on factors that may affect the fair market value (FMV) appraisal and the maximum economic recovery (MER) of the tract or tracts proposed to be offered. Proprietary data marked as confidential may be submitted to the Geological Survey in response to the solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(b)(1) The authorized officer shall not accept any bid that is less than the fair market value as determined by the Department.

(2) Minimum bonus bids shall not be less than \$25 per acre.

§ 3422.1-2 [Removed]

51. Section 3422.1-2 is removed in its entirety.

§ 3422.2 [Amended]

52. Section 3422.2 is amended by:

(a) Revising its title as follows:
"§ 3422.2 Notice of sale and detailed statement."

(b) Amending paragraph (b)(1) by inserting after the phrase "being offered and" the phrase "may include";

(c) Revising paragraph (b)(2) as follows:

• • • • •

(b) • • •
(2) Contain a description of the coal resources to be offered; and

• • • • •

(d) Revising paragraph (c) to read:

• • • • •
(c) The detailed statement of the terms and conditions of the lease(s) offered and bidding instructions for sale shall:

(1) Contain an explanation of the manner in which the bids may be submitted;

(2) Contain a warning to all bidders concerning 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders;

(3) Specify that the Secretary reserves the right to reject any and all bids and the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason;

(4) Contain a notice that each bid shall be accompanied by the bidder's qualifications (See 43 CFR 3472.2-2);

(5) Contain a notice to bidders that the winning bidders shall have to submit the information required by the Attorney

General for post-sale review (See 43 CFR 3422.3-4);

(6) If appropriate, contain a copy of any written consent given by a qualified surface owner and its terms, including payments which the high bidder, if not the holder of the consent, shall have to make;

(7) If appropriate, contain a notice that bidders shall file a statement that all information they hold relevant to written consents affecting any area offered in the sale in which the bid is submitted has been filed with the proper Bureau of Land Management State office (43 CFR Subpart 1821) in accordance with the provisions of Subpart 3427 of this title;

(8) Contain a copy of the proposed lease, including all terms and special stipulations; and

(9) Contain any other information deemed appropriate by the authorized officer.

(e) Revising paragraph (d) to read:

(d) Each successful bidder, if any, shall reimburse the United States for a proportionate share of the cost of publishing the notice of sale as a condition of lease issuance.

53. A new § 3422.3-1 is added to read:

§ 3422.3-1 Bidding systems.

The Department may conduct lease sales using any bidding system authorized by the Department of Energy in 10 CFR Part 378.

§ 3422.3-1 Redesignated as § 3422.3-2 and Amended.

54. Section 3422.3-1 is renumbered § 3422.3-2 and is amended by:

(a) Amending paragraph (a)(2) by inserting after the word "submitting" in the second sentence the word "qualified"; and

(b) Amending paragraph (b)(2) by removing the phrase "fair market value" and replacing it with the figure "FMV".

§ 3422.3-2 [Removed]

55. Section 3422.3-2 is removed in its entirety.

§ 3422.3-4 [Amended]

56. Section 3422.3-4 is amended by:

(a) Removing paragraph (a) in its entirety;

(b) Renumbering paragraph (b) as paragraph (a) and revising it as follows:

(a) Subsequent to a lease sale, but prior to issuing a lease, the authorized officer shall require the successful bidder to submit on a form or in a format approved by the Attorney General the information set out in this

section relating to the bidder's coal holdings to the authorized officer for transmittal to the Attorney General. Upon receipt of the information, the authorized officer shall notify the Attorney General of the proposed lease issuance, the name of the successful bidder and terms of the proposed lease sale and shall transmit the bidder's statement on coal holdings. A description of the information required by the Attorney General and the form or format for submission of the information may be obtained from the authorized officer.

(c) Renumbering paragraph (c) as paragraph (b) and amending it by removing the phrase "a statement of coal holdings in the above form" and replacing it with the phrase "the currently required information";

(d) Renumbering paragraph (d) as paragraph (c) and amending it by removing from the second sentence the phrase "authorized officer" and replacing it with the word "Director";

(e) Renumbering paragraph (e) as paragraph (d) and amending it by removing the phrase "notifies the authorized officer that" and replacing it with the phrase "notifies the Director that" and by removing the figure "(f)" and replacing it with "(e)";

(f) Renumbering paragraph (f) as paragraph (e) and amending it by removing the phrase "notifies the authorized officer that" and replacing it with the phrase "notifies the Director that" and removing in subparagraph (1) the figure "(b)" and replacing it with the figure "(a)";

(g) Renumbering paragraph (g) as paragraph (f) and amending it by removing the figure "(b)" and replacing it with the figure "(a)"; and

(h) Renumbering paragraph (h) as paragraph (g) and revising it as follows:

(g) Information submitted to the authorized officer to comply with this section shall be treated as confidential and proprietary data if marked "confidential" by the reporting company. Confidential information shall be submitted to the authorized officer in a sealed envelope and shall be transmitted in that form to the Attorney General.

57. Section 3422.4 is revised as follows:

§ 3422.4 Award of lease.

(a) After the authorized officer has accepted a high qualified bid, and the Attorney General has not objected to lease issuance or the procedures in § 3422.3-4(e)(2) of this title have been

completed, the authorized officer shall send 4 copies of the lease form to the successful bidder. The successful bidder shall complete, sign and return these forms and shall: pay the balance of the bonus bid, if required; pay the first year's rental; pay the proportionate share of the cost of publishing the notice of sale; and file a lease bond. Upon receipt of the above, the authorized officer shall execute the lease.

(b) If the successful bidder dies before the lease is issued, the provisions of § 3472.2-4 of this title shall apply.

(c) At least half of the acreage offered for competitive lease in any 1 year shall be offered on a deferred bonus payment basis. In a deferred bonus payment, the lessee shall pay the bonus in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next 4 anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

(d) If the successful bidder fails to comply with the requirements of paragraph (a) of this section, the deposit on the successful bid shall be forfeited to the United States.

(e) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the deposit submitted with the bid shall be refunded.

§ 3425.0-2 [Amended]

58. Section 3425.0-2 is amended by removing the phrase "§§ 3420.4 through 3420.7 of this title" and replacing it with the phrase "§§ 3420.3 through 3420.5-2 of this title."

§ 3425.0-6 [Removed]

59. Section 3425.0-6 is removed in its entirety.

§ 3425.1-4 [Amended]

60. Section 3425.1-4 is amended by:

(a) Revising paragraphs (a)(1) and (2) as follows:

(a) * * *

(1) That the coal reserves applied for shall be mined as part of a mining operation that is producing coal on the date of the application, and either:

(i) The Federal coal is needed within 3 years (A) to maintain an existing mining operation at its current average annual level of production on the date of application or (B) to supply coal for contracts signed prior to July 19, 1979, as substantiated by a complete copy of the supply or delivery contract, or both; or

(ii) If the coal deposits are not leased, they would be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for would be used within 3 years; and

(2) That the need for the coal deposits shall have resulted from circumstances that were either beyond the control of the applicant or could not have been reasonably foreseen and planned for in time to allow for consideration of leasing the tract under the provisions of § 3420.3 of this title.

(b) Revising paragraph (b) to read:

(b) The extent of any lease issued under this section shall not exceed 8 years of recoverable reserves at the applicant's average annual level of production or contracted level of production on the date of application or contracted level of production as of July 18, 1979; and

(c) Removing paragraph (c) in its entirety.

§ 3425.1-5 [Amended]

61. Section 3425.1-5 is amended by removing the figure "§ 3420.3-1 (a)(1)" where it appears in paragraphs (a) and (b) and replacing it with the figure "§ 3400.5".

§ 3425.1-7 [Amended]

62. Section 3425.1-7 is amended by:

(a) Amending paragraph (b)(1) by removing the phrase "(which may be available from state or Federal sources)"; and

(b) Amending paragraph (d) by removing the phrase "(See 43 CFR Subpart 3427)" and replacing it with the phrase "in accordance with Subpart 3427 of this title."

§ 3425.1-8 [Amended]

63. Section 3425.1-8 is amended by:

(a) Amending paragraph (a) by removing the word "when" and replacing it with the word "if"; and

(b) Amending paragraph (a)(2) by removing the phrase "violate the integrity of the normal leasing process" and replacing it with the phrase "compromise the regional leasing process described in § 3420.3 of this title".

§ 3425.2 [Amended]

64. Section 3425.2 is amended by removing the figure "§ 3420.1-5" and replacing it with the figure "§ 3420.1-4".

§ 3425.3 [Amended]

65. Section 3425.3 is amended by:

(a) Revising paragraph (a) as follows:

(a) Before a lease sale may be held under this subpart, the authorized

officer shall conduct an environmental analysis of the proposed lease area in accordance with 40 CFR 1500 through 1508.

(b) Removing paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) in their entirety.

66. Section 3425.4 is revised as follows:

§ 3425.4 Consultation and sale procedures.

(a)(1) Prior to holding any lease sale in response to any application under this subpart, a public hearing shall be held on the environmental assessment or environmental impact statement, the proposed sale and the fair market value and maximum economic recovery on the proposed lease tract.

(2) Prior to holding any lease sale under this subpart, the Secretary shall consult with the entities and individuals listed in §§ 3420.4-2 through 3420.4-5 of this title.

(b) Subpart 3422 of this title applies in full to any sale to be held in response to an application filed under this subpart.

67. Section 3427.0-7 is revised as follows:

§ 3427.0-7 Purpose.

The purpose of this subpart is to set out the requirements for submission of evidence of written surface owner consent from qualified surface owners of split estate lands.

68. Section 3427.1 is revised as follows:

§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0-5(kk)) where the surface is owned by a qualified surface owner, coal deposits that will be mined by other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0-5(gg)) allowing entry and commencement of surface mining operations.

§ 3427.2 [Amended]

69. Section 3427.2 is amended by:

(a) Revising paragraph (a)(1) to read:

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State office (43 CFR Subpart 1821) prior to the posting of the lease sale notice (See § 3422.2(a)) for the lands to which the consent applies. It shall be the responsibility of parties intending to file consents to be aware of pending coal lease sale notice dates.

(b) Removing paragraph (d) in its entirety;

(c) Renumbering paragraph (e) as paragraph (d) and revising it to read:

(d) The authorized officer shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (d) (2) and (3) of this section:

(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if it provides that after the lease sale for the tract to which the consent applies:

(i) The successful bidder may assume all rights and obligations of the holder of the consent, including the obligation to make all payments to the grantor of the consent and to reimburse the holder of the consent for all money previously paid to the grantor under the consent contract; and

(ii) Neither the holder nor the grantor of the consent has any right under the consent contract to prevent the successful bidder from assuming the rights and obligations of the holder of the consent by imposing additional costs or conditions or otherwise;

(2) The named surface owner is a qualified surface owner as defined in § 3400.0-5(gg) of this title; and

(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.

(d) Renumbering paragraphs (f) and (g) as paragraphs (e) and (f);

(e) Renumbering paragraph (h) as paragraph (g) and amending it by removing the phrase "State Director" and replacing it with the phrase "authorized officer";

(f) Renumbering paragraphs (i) and (j) as paragraphs (h) and (i); and

(g) Adding a new paragraph (j) to read:

(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to requests for such evidence, the authorized officer shall presume that the surface owner is unqualified.

70. A new § 3427.5 is added to read:

§ 3427.5 Unqualified surface owners.

(a) Lease tracts involving surface owners who are not qualified (see § 3400.0-5(gg)) shall be leased subject to the protections afforded the surface owner by the statute(s) under which the surface was patented and the coal

reserved to the United States. No consent from an unqualified surface owner is required under this subpart before the authorized officer may issue a lease for such a tract (see section 9 of the Stock-Raising Homestead Act (43 U.S.C. 249); the Act of March 3, 1909 (30 U.S.C. 81); section 3 of the Act of June 22, 1910 (30 U.S.C. 85); and section 5 of the Act of June 21, 1949 (30 U.S.C. 54)).

(b) The provisions of §§ 3427.1 through 3427.4 of this title are inapplicable to any lease tract on which a consent has been given by an unqualified surface owner. The high bidder at the sale of such a tract is not required to submit any evidence of written consent before the authorized officer may issue the lease unless the statute establishing the relative rights of the United States (and its lessees) and the surface owner so requires.

PART 3430—NONCOMPETITIVE LEASES

§ 3430.0-3 [Amended]

71. Section 3430.0-3 is amended by removing paragraph (c) in its entirety.

72. Section 3430.0-7 is revised as follows:

§ 3430.0-7 Scope.

Section 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. 201(b), repealed the Secretary's authority to issue or extend a coal prospecting permit on Federal lands. Therefore, these regulations apply only to preference right lease applications based on prospecting permits issued prior to August 4, 1976. The surface owner consent provisions of section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304) do not apply to preference right lease applications.

73. Section 3430.2-1 is amended by:

(a) Revising the first paragraph and paragraph (a) of the section as follows:

§ 3430.2-1 Initial showing.

All preference right coal lease applications shall have contained or shall have been supplemented by the timely submission of:

(a) Information on the quantity and quality of the coal resources discovered within the boundaries of the prospecting permit area, including an average proximate analysis, sulfur content and BTU content of the coal, and all supporting geological and geophysical data used to develop the required information.

(b) Amending paragraph (c)(2) by adding the word "and" after the semicolon at the end;

(c) Amending paragraph (c)(3) by removing the semicolon and replacing it with a period;

(d) Removing paragraphs (c)(4), (c)(5) and (c)(6) in their entirety; and;

(e) Adding a new paragraph (d) as follows:

(d) The authorized officer may request from the applicant, or the applicant may submit, any other information necessary to conduct an environmental analysis of the proposed mining operation, formulate mitigating measures and lease terms and determine commercial quantities.

§ 3430.2-2 [Removed]

74. Section 3430.2-2 is removed in its entirety.

§ 3430.2-3 Redesignated as § 3430.2-2 and Amended

75. Section 3430.2-3 is renumbered § 3430.2-2 and is amended by removing the phrase "§§ 3430.2-1 and 3430.2-2" and replacing it with the figure "§ 3430.2-1".

3430.3-1 [Amended]

76. Section 3430.3-1 is amended by adding at the end of the first sentence in paragraph (c)(1) the phrase "in a land use analysis" and by removing the last sentence of paragraph (c)(3).

3430.3-2 [Amended]

77. Section 3430.3-2 is amended by:

(a) Revising paragraph (b) as follows:

(b) The environmental analysis may be conducted in conjunction with and included as part of the environmental analysis required for coal activity planning under § 3420.3-4 of this title.

(b) Removing paragraphs (c), (d) and (e) in their entirety.

§ 3430.4-1 [Amended]

78. Section 3430.4-1 is amended by:

(a) Amending paragraph (a) by removing the word "promptly" and replacing it with the phrase "if not previously submitted";

(b) Amending paragraph (b) by removing the phrase "applicant with the request" and replacing it with the phrase "applicant, separately or with a request";

(c) Amending paragraph (c) by revising subparagraph (3) to read:

(c) * * *

(3) If the applicant intends to mine the deposit in the lands covered by a preference right lease application as part of a logical mining unit, the applicant shall include the estimated

costs and revenue of the combined mining venture.

(d) Revising paragraph (d) to read:

(d) The applicant may withdraw any lands from the application and delete them from the final showing if the applicant is no longer interested in leasing such lands or if such lands would be subject to special conditions or protective stipulations and the cost of mining the lands subject to these conditions or protective stipulations would adversely affect the commercial quantities determination.

§ 3430.5-1 [Amended]

79. Section 3430.5-1(a) is amended by:

(a) Revising paragraph (a)(3) to read:

(3) The applicant otherwise failed to meet statutory or regulatory requirements; or

(b) Adding a new paragraph (a)(4) to read:

(4) The applicant does not permit declassification of proprietary information within the time period specified in § 3430.2-2(b) of this title.

80. Section 3430.5-3 is revised to read:

§ 3430.5-3 Determination to lease.

A preference right lease shall be issued if, upon review of the application, any available land use plan and the environmental analysis, the authorized officer determines that:

(a) Coal has been discovered in commercial quantities on the lands applied for;

(b) The applicant has used reasonable economic assumptions and data to support the showing that coal has been found on the proposed lease in commercial quantities; and

(c) The conditions or protective lease stipulations assure that environmental damage can be avoided or acceptably mitigated.

81. Section 3430.5-4 is revised to read:

§ 3430.5-4 Lease exchange.

Upon the recommendation of the authorized officer, or the request of the applicant, the Secretary may initiate lease exchange procedures under Subpart 3435 of this title if:

(a) The lands under application have been shown to contain commercial quantities of coal;

(b) All or a portion of the proposed lease has been assessed as lands which

should be unavailable for coal development because of land use or resource conflicts or as lands which are unsuitable for coal mining under the provisions of Subpart 3461 of this title; and

(c) The lands are exempted from the application of any relevant unsuitability criteria or the Secretary lacks the authority to prevent damage to or loss of the land use or resource values threatened by lease operations.

82. Section 3430.6-1 is revised to read:

§ 3430.6-1 Lease terms.

Each preference right lease shall be subject to the terms provided for Federal coal leases established in Part 3470 of this title.

§ 3430.6-3 [Removed]

83. Section 3430.6-3 is removed in its entirety.

§ 3430.6-4 Redesignated as 3430.6-3 and Amended.

84. Section 3430.6-4 is renumbered § 3430.6-3 and is amended by removing the phrase "subpart 3400.0-5 of this title" and replacing it with the phrase "30 CFR 211.2".

§ 3431.2 [Amended]

85. Section 3431.2(c) is amended by removing the word "surface" where it first appears and replacing it with the word "Surface" and by adding immediately after the phrase "authorized officer" the phrase "of the surface management agency".

§ 3435.0-3 [Amended]

86. Section 3435.0-3(b) is amended by:

- (a) Removing the word "and" at the end of paragraph (b)(2);
- (b) Removing the period at the end of paragraph (b)(3) and replacing it with a semicolon; and
- (c) Adding new paragraphs (b) (4) and (5) to read:

- (b) * * *
- (4) Section 1 of the Act of October 19, 1980 (94 Stat. 2269); and
- (5) Section 4 of the Rattlesnake National Recreation Area and Wilderness Act of 1980 (94 Stat. 2272).

§ 3435.1 [Amended]

87. Section 3435.1 is amended by:

- (a) Revising paragraph (c) to read:
- (c) A lease for a mineral listed in subpart 3526 of this title by mutual agreement between the applicant and the Secretary; and
- (b) Removing the sentence following paragraph (e).

§ 3435.2 [Amended]

88. Section 3435.2 is amended by:

- (a) Revising paragraph (b) to read:

(b) Except for leases qualified under Subpart 3436 of this title, the Secretary may issue a new coal lease in exchange for the relinquishment of outstanding leases or lease applications only in those cases where the Congress has specifically authorized such exchanges.

(b) Amending paragraph (c) by removing the word "appropriate" and replacing it with the phrase "in the public interest"; and

(c) Amending paragraph (d) by removing the phrase "and 3432.2(b) of this title" and replacing it with the phrase ", § 3432.2(b) and § 3432.3(a) of this title."

§ 3435.3-1 [Amended]

89. Section 3435.3-1 is amended by:

- (a) Amending paragraph (b) by removing the phrase "include a statement of" and replacing it with the word "state";
- (b) Revising paragraph (c) to read:

(c) The exchange notice shall contain a description of the leased lands or lands under preference-right lease application being considered for exchange. These lands may include all or part of an existing lease or preference right lease application.

- (d) Inserting a new paragraph (d) to read:

(d) The exchange notice may contain a description of the lands for which the Secretary would grant an exchange lease or lease interest. If a coal lease modification would be granted by exchange, the lands shall be selected from those lands found acceptable for further consideration for coal leasing under § 3420.1 of this title; and

- (d) Renumbering paragraph (d) as paragraph (e).

§ 3435.3-2 [Amended]

90. Section 3435.3-2(a) is revised to read:

(a) The lessee or preference right lease applicant wishing to negotiate an exchange shall so reply in writing. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or coal lease modification.

§ 3435.3-1 [Amended]

91. Section 3435.3-3 is amended by:

(a) Amending paragraph (a) by removing the colon and adding the phrase "negotiate an exchange consistent with § 3435.1 of this title." and removing subparagraphs (1) through (4) in their entirety; and

(b) Amending paragraph (b) by removing the figure "§ 3420.2-3" and replacing it with the figure "§ 3420.1".

92. Section 3435.3-5 is revised to read:

§ 3435.3-5 Notice of public hearing.

After the lessee or lease applicant and the Secretary agree on an exchange proposal, notice of the exchange proposal shall be published in the Federal Register and in at least 1 newspaper of general circulation in each county or equivalent political subdivision where both the offered and selected lands are located. The notice shall announce that, upon request, at least 1 public hearing shall be held in a city or cities located near each tract involved. The notice shall also contain the Secretary's preliminary findings why the proposed exchange is in the public interest. Any notice of the availability of a draft environmental assessment or environmental impact statement on the exchange may be used to comply with this section.

§ 3435.3-6 [Amended]

93. Section 3435.3-6(a) is amended by removing the phrase "at least 45 days after this notification" and replacing it with the phrase "45 days".

94. Section 3435.4 is revised to read:

§ 3435.4 Issuance of lease, lease modification or bidding rights.

(a) If, after any public hearing(s), the Secretary by written decision concludes that an exchange is in the public interest, the Secretary shall transmit to the lessee or preference right lease applicant:

(1) A statement of the Secretary's findings that lease issuance is in the public interest;

(2) Either (i) copies of the coal or other mineral exchange lease or coal lease modification containing the terms, conditions and special stipulations under which the lease or coal lease modification is to be granted, or (ii) a statement describing the terms and conditions of the coal lease bidding rights to be granted in exchange; and

(3) A statement for execution by the lessee or preference right lease applicant relinquishing all right or interest in the lease or preference right lease application, or portion thereof, to be exchanged.

(b) The exchange lease, lease modification or coal lease bidding rights

shall be issued upon relinquishment of the lease, preference right lease application, or portion thereof.

(c) The exchange lease or lease modification shall be subject to all relevant provisions of group 3400 or 3500 of this title, 30 CFR Chapter VII, Subchapter D and 30 CFR Part 211, as appropriate.

95. Subpart 3436 of Part 3430 is revised to read:

Subpart 3436—Coal Lease and Coal Exchanges—Alluvial Valley Floors

Sec.

- 3436.0-1 Purpose.
- 3436.0-2 Objective.
- 3436.0-3 Authority.
- 3436.0-5 Definitions.
- 3436.1 Coal lease exchanges.
- 3436.1-1 Qualified lease proponents.
- 3436.1-2 Federal coal deposits subject to lease by exchange.
- 3436.1-3 Exchange procedures.
- 3436.2 Fee coal exchanges.
- 3436.2-1 Qualified exchange proponents.
- 3436.2-2 Federal coal deposits subject to disposal through exchange.
- 3436.2-3 Exchange procedures.

Subpart 3436—Coal Lease and Coal Land Exchanges—Alluvial Valley Floors

§ 3436.0-1 Purpose.

The purpose of this subpart is to establish criteria and procedures for the exchange of coal leases and for the exchange of fee held coal for unleased Federally-owned coal in cases where surface coal mining operations on the lands that are covered by an existing coal lease or that are fee held would interrupt, discontinue or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity or quality of water in surface or underground systems that supply those alluvial valley floors.

§ 3436.0-2 Objective.

(a) The objective of this subpart is to provide relief to persons holding leases for Federal coal deposits or fee title to coal deposits which underlie or are near alluvial valley floors and which cannot be mined through surface mining operations under section 510(b)(5) of the Surface Mining Control and Reclamation Act, through the exchange of lands, or interests therein, pursuant to the authority granted by the statutory provision.

(b) The Secretary shall exercise the authority to dispose of Federal coal deposits by lease to meet this objective when he/she determines that the exchange would serve the public

interest. In determining whether such an exchange will serve the public interest, the Secretary will consider a wide variety of factors, including better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. Unless consideration of the above factors would show otherwise, it will be assumed that an exchange will serve the public interest if substantial financial and legal commitments have been made toward development of the offered coal resource.

§ 3436.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)).

§ 3436.0-5 Definitions.

As used in this subpart, the term "substantial financial and legal commitments" is a relative one, and the determination whether such commitments have been made, so as to qualify a person for an exchange under this subpart, will be made on a case-by-case basis. In making this determination, the Secretary will consider the level of expenditures made prior to January 1, 1977, that are exclusively related to development of the coal resource which is offered in exchange, taken together with the damages for which the person would be liable as a result of any legal commitments made prior to January 1, 1977, solely in connection with development of said coal resource, and the Secretary will compare that level of expenditure to the estimated total cost of developing the coal resource to the point of establishing a producing surface coal mining operation.

§ 3436.1 Coal lease exchanges.

§ 3436.1-1 Qualified lease proponents.

(a) Coal lease exchanges under this program shall be available only to persons who:

(1) Hold a Federal coal lease or preference right lease application covering lands that include or are near an alluvial valley floor located west of the 100th Meridian, west longitude, where surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because such operations would interrupt farming or materially damage the quantity and quality of the water in surface or underground water systems

that would supply the alluvial valley floor;

(2) Have made substantial financial and legal commitments prior to January 1, 1977, in connection with the lease or preference right lease application; and

(3) Are not entitled to continue any existing surface coal mining operations pursuant to the first proviso of section 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Persons seeking an exchange bear the burden of establishing that they are qualified pursuant to paragraph (a) of this section. The Secretary shall accept a determination made pursuant to 30 CFR 785.19(c) as conclusive evidence of the existence of an alluvial valley floor.

§ 3436.1-2 Federal coal deposits subject to lease by exchange.

The lease offered by the Secretary in exchange for existing coal leases shall be for Federal coal deposits determined to be acceptable for further consideration for coal leasing pursuant to § 3420.1-5 or § 3420.2-3 of this title.

(a) Any person meeting the requirements of § 3436.1-1(a) of this title may apply for a lease exchange. No special form of application is required.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified and whether the exchange serves the public interest. The exchange shall be processed in accordance with the procedures in subpart 3435 of this title for other lease and lease interest exchanges.

(c) After the Secretary and the exchange proponent have agreed to terms pursuant to § 3435.3-3 of this title, the Secretary may elect to consider the exchange proposal in conjunction with the activity planning process for the coal production region in which the lands proposed to be leased are located pursuant to § 3420.3 of this title. If the Secretary elects to process the exchange proposal in this manner, the tracts identified for use in the lease exchange shall be:

(1) Delineated for analysis pursuant to § 3420.3-3 of this title;

(2) Ranked as having high desirability pursuant to § 3420.3-4(a) of this title; and

(3) Selected for inclusion for analysis purposes in alternative proposed lease sale schedules pursuant to § 3420.3-4(c) of this title. Such tracts shall then be the subject of environmental analysis, public comment and consultation pursuant to §§ 3420.3 and 3420.4 of this title.

(d) If the Secretary elects to process the exchange proposal independently of the activity planning process, the

Secretary shall consider the environmental and resource information acquired during the land use planning process and found in the most recent regional environmental impact statement completed under the Federal coal management program. An environmental assessment or environmental impact statement shall be prepared on the proposed exchange prior to the public hearings and consultation required by §§ 3435.3-5 through 3435.3-7 of this title.

(e) In determining under § 3435.3-4 of this title the estimated value of the lease or preference right lease application to be relinquished, the Secretary shall proceed as though there were no prohibitions on surface mining operations on the lands covered by the lease or preference right lease application.

(f) The exchange proponent shall bear all administrative costs of the exchange, including the cost of establishing the value of each lease involved in the exchange.

§ 3436.2 Fee coal exchanges.

§ 3436.2-1 Qualified exchange proponents.

(a) Fee coal exchanges under this program shall only be available to persons who:

(1) Own coal west of the 100th Meridian, west longitude, underlying or near an alluvial valley floor where surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because such operations would interrupt farming or materially damage the quantity and quality of the water in surface or underground water systems that would supply the alluvial valley floor; and

(2) Are not entitled to continue any existing surface coal mining operation pursuant to the first proviso to section 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Exchange proponents bear the burden of establishing their qualifications pursuant to paragraph (a) of this section. The Secretary shall accept a determination made pursuant to 30 CFR 785.19(c) as conclusive evidence of the existence of an alluvial valley floor.

§ 3436.2-2 Federal coal deposits subject to disposal by exchange.

The coal deposits offered in exchange by the Secretary shall be determined to be acceptable for further consideration for coal leasing pursuant to § 3420.1 of this title and shall be in the same State as the coal deposit offered in exchange by the proponent.

§ 3436.2-3 Exchange procedures.

(a) Any person meeting the requirements of § 3436.2-1(a) of this title may apply for an exchange. No special form of application is required. Any exchange proposal should be directed to the District Manager for the Bureau of Land Management district in which the Federal coal deposits are located.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified.

(c) After the authorized officer and the owner of the coal deposit underlying an alluvial valley floor identify Federal coal deposits that are suitable for consideration for disposition through exchange, the exchange shall be processed in accordance with Part 2200 of this title, except as provided in this section.

(d) The Secretary may consolidate the environmental analysis for the proposed exchange with the regional environmental impact statement prepared on alternative leasing schedules for the coal production region in which the Federal coal deposits are located pursuant to § 3420.3-4 of this title. If the environmental analysis is not so consolidated, the Secretary shall consider environmental and other resource information obtained during the land use planning process or at other stages of the coal management program in preparing an appropriate environmental analysis or environmental impact statement on the proposed exchange.

(e) Exchanges shall be made on an equal value basis, provided that values of the lands exchanged may be equitized by the payment of money to the grantor or the Secretary so long as the payment does not exceed 25 percent of the total value of the lands or interests transferred out of Federal ownership. In determining the value of the coal deposit underlying or near an alluvial valley floor, the Secretary shall proceed as though there were no prohibition on surface coal mining operations on the property.

(f) The owner of the coal deposits underlying or near an alluvial valley floor shall bear all administrative costs of the exchange, including the cost of establishing the value of each deposit involved in the exchange.

§§ 3437.0-1 through 3437.2 (Subpart 3437) [Removed]

96. Subpart 3437 of Part 3430 is removed in its entirety.

PART 3440—LICENSES TO MINE

§ 3440.1-4 [Amended]

97. Section 3440.1-4 is amended by amending paragraph (c)(3) by removing the third and fourth sentences.

§ 3440.1-5 [Removed]

98. Section 3440.1-5 is removed in its entirety.

§ 3440.1-6 Redesignated § 3440.1-5 and Amended

99. Section 3440.1-6 is renumbered § 3440.1-5 and is amended by removing the phrase "regulatory authority" and replacing it with the phrase "Surface Mining Officer".

100. A new § 3440.1-6 is added to read:

§ 3440.1-6 Cancellation or forfeiture.

Any license to mine may be canceled or forfeited for violation of the Act under which the license to mine was issued, applicable Federal laws and regulations, or the terms and conditions of the license to mine.

PART 3450—MANAGEMENT OF EXISTING LEASES

§ 3451.1 [Amended]

101. Section 3451.1 is amended by:

(a) Amending paragraph (a) by removing subparagraph (3) in its entirety;

(b) Removing paragraph (b) in its entirety;

(c) Renumbering paragraph (c) as paragraph (b) and amending it by removing all after the figure "1976"; and

(d) Renumbering paragraphs (d) and (e) as paragraphs (c) and (d).

§ 3451.2 [Amended]

102. Section 3451.2 is amended by removing paragraph (b) in its entirety and renumbering paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d).

103. Section 3452.1-1 is revised to read:

§ 3452.1-1 General.

The lease may surrender the entire lease, a legal subdivision thereof, an aliquot part thereof (not less than 10 acres) or any bed of the coal deposit therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished. If the authorized officer accepts the relinquishment of any coal deposits in a lease, the lease reserves shall be adjusted in accordance with 30 CFR Part 211.

104. Section 3452.1-3 is revised to read:

§ 3452.1-3 Acceptance.

The effective date of the lease relinquishment shall, upon approval by an authorized officer, be the date on which the lessee filed the lease relinquishment. No relinquishment shall be approved until the authorized officer determines that the relinquishment will not impair the public interest, that the accrued rentals and royalties have been paid and that all the obligations of the lessee under the regulations and terms of the lease have been met.

§ 3452.2-1 [Amended]

105. Section 3452.2-1 is amended by:

(a) Revising paragraph (a)(2) to read:

(a) * * *

(2) fails to comply with any applicable general regulations; or

* * *

(b) Removing paragraph (b) in its entirety; and

(c) Renumbering paragraph (c) as paragraph (b).

§ 3452.3 [Amended]

106. Section 3452.3 is amended by:

(a) Amending paragraph (a) by inserting after the word "issued" the phrase "or readjusted"; and

(b) Amending paragraph (b) by inserting before the word "cancelled" the word "relinquished";

107. Section 3431.1 is revised to read:

§ 3451.1 Qualifications.

Leases may be transferred in whole or in part to any person, association or corporation qualified under Subpart 3472 of this title to hold such leases, except as provided by §§ 3420.1-4(b)(1)(iv) and 3420.1-4(b)(2)(ii) of this title.

§§ 3453.1-1, 3453.1-2, 3453.1-3, 3453.1-4 and 3453.1-5 [Removed]

108. Sections 3453.1-1, 3453.1-2, 3453.1-3, 3453.1-4 and 3453.1-5 are removed in their entirety.

§ 3453.2-2 [Amended]

109. Section 3453.2-2 is amended by:

(a) Revising paragraphs (a) and (b) to read:

(a) Transfers of any record title interest shall be filed in triplicate and shall be accompanied by a request for approval from the transferee.

(b) No specific form need be used for requests for approval of transfers. The request for approval shall contain evidence of the transferee's qualifications, including a statement of Federal coal lease acreage holdings. This evidence shall consist of the same showing of qualifications required of a lease applicant by Subpart 3472 of this

title. A single signed copy of the qualifications statement is sufficient.

(b) Amending paragraph (g) by removing the phrase "so treated, consistent with the Freedom of Information Act," and replacing it with the phrase "treated in accordance with the laws and regulations governing the confidentiality of such information."

110. Section 3453.2-3 is revised to read:

§ 3453.2-3 Filing location and fee.

Instruments of transfer and requests for approval shall be filed in the Bureau of Land Management office having jurisdiction over the leased lands proposed for transfer (see 43 CFR Subpart 1821). Each instrument of transfer shall be accompanied by a nonrefundable filing fee (see 43 CFR 3473.2).

§ 3453.2-4 [Amended]

111. Section 3453.2-4 is amended by revising the third sentence of paragraph (a) to read:

(a) * * * If the transfer is for only part of the leased lands, it shall be for a legal subdivision or any bed of coal deposits therein, and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee shall be submitted, and (2) a new bond with the transferee as principal covering the portion transferred shall be submitted.

* * *

§ 3453.2-5 [Removed]

112. Section 3453.2-5 is removed in its entirety.

§ 3453.2-6 Redesignated as § 3453.2-5

113. Section 3453.2-6 is redesignated as 3453.2-5 and is revised to read:

§ 3453.2-5 Effect of partial assignment.

A transfer of full record-title to only part of the lands, or any bed of the coal deposits therein, shall segregate the transferred and retained portions into separate and distinct leases, with the retained portion keeping the original serial number. The newly segregated lease shall be assigned a new serial number and shall contain the same terms and conditions as the original lease.

§ 3453.3-1 [Amended]

114. Section 3453.3-1 is amended by:

(a) Amending paragraph (e) by removing the figure "§ 3473.3" and replacing it with the figure "§ 3473.2"; and

(b) Amending paragraph (f) by removing the word "or" at the end thereof;

(c) Amending paragraph (g) by adding the word "or" at the end thereof; and

(d) Adding a new paragraph (h) to read:

* * *

(h) The transfer would violate section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)(2)).

§ 3453.3-2 [Amended]

115. Section 3453.3-2 is amended by:

(a) Amending paragraph (a) by removing the phrase "an application for"; and

(b) Revising paragraph (b) to read:

* * *

(b) The authorized officer shall not approve a transfer until 30 days after the requirements of § 3422.3-4 of this title have been met.

§ 3453.3-3 [Amended]

116. Section 3453.3-3 is amended by inserting after the word "requests" the phrase "in writing."

PART 3460—ENVIRONMENT**§ 3461.0-7 [Amended]**

117. Section 3461.0-7 is amended by removing the figure "§ 3400.0-5(vv)" and replacing it with the figure "§ 3400.0-5(mm)" and removing the last sentence of the section in its entirety.

§ 3461.1 [Amended]

118. Section 3461.1 is amended by:

(a) Amending paragraph (a)(1) by removing the last sentence;

(b) Amending paragraph (b)(1) by removing the phrase "or for agricultural crop production";

(c) Amending paragraph (c)(1) by inserting a new subparagraph (iii) to read:

* * *

(c) * * *

(i) * * *

(iii) If, after public notice and opportunity for public hearing in the locality, a written finding is made by the authorized officer that the interests of the public and the landowners affected by mining within 100 feet of a public road will be protected.

* * *

(d) Further amending paragraph (c)(1) by renumbering the existing subparagraph (iii) as subparagraph (iv) and removing from that subparagraph the word "buildings" and replacing it with the word "dwellings";

(e) Amending paragraph (i) by adding a new subparagraph (3) to read:

* * *

(i) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(f) Amending paragraph (k) by adding a new subparagraph (3) to read:

(k) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(g) Amending paragraph (1) by adding a new subparagraph (3) to read:

(l) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(h) Amending paragraph (m) by adding a new subparagraph (3) to read:

(m) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(i) Amending paragraph (n) by adding a new subparagraph (3) to read:

(n) * * *

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(j) Amending paragraph (p) by revising subparagraph (1) to read:

(p)(1) *Criterion Number 16.* Federal lands in riverine, coastal and special floodplains (100-year recurrence

interval) on which the surface management agency determines that mining could not be undertaken without substantial threat of loss of life or property shall be considered unsuitable for all or certain stipulated methods of coal mining." and

(k) Amending paragraph (q) by revising subparagraph (2) to read:

(q) * * *

(2) *Exception.* A lease may be issued where the surface management agency in consultation with the municipality (incorporated entity) or the responsible governmental unit determines, as a result of studies, that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree.

§ 3461.2 [Amended]

119. Section 3461.2(b) is amended by removing the last sentence of the paragraph.

120. Section 3461.3-1 is revised to read:

§ 3461.3-1 Assessment and land use planning.

(a)(1) Each of the unsuitability criteria shall be applied to all coal lands with development potential identified in the comprehensive land use plan or land use analysis. For areas where 1 or more unsuitability conditions are found and for which the authorized officer of the surface management agency could otherwise regard coal mining as a likely use, the exceptions and exemptions for each criterion may be applied.

(2) The authorized officer of the surface management agency shall describe in the comprehensive land use plan or land use analysis the results of the application of each unsuitability criterion, exception and exemption. The authorized officer of the surface management agency shall state in the plan or analysis those areas which could be leased only subject to conditions or stipulations to conform to the application of the criteria or exceptions. Such areas may ultimately be leased provided that these conditions or stipulations are contained in the lease.

§ 3461.3-2 [Amended]

121. Section 3461.3-2 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3420.2-6" and replacing it with the phrase "§§ 3420.1-6 and 3420.1-7";

(b) Amending paragraph (b) by removing the last sentence of that paragraph; and

(c) Amending paragraph (c) by removing the last sentence of that paragraph.

§ 3461.3-3 [Removed]

122. Section 3461.3-3 is removed in its entirety.

123. Section 3461.4-1 is revised to read:

§ 3461.4-1 Application of criteria on unleased lands.

(a) The unsuitability criteria shall only be applied, prior to lease issuance, to all lands leased after July 19, 1979.

(b) The unsuitability criteria shall be initially applied either:

(1) During land use planning or the environmental assessment conducted for a specific lease application; or

(2) During land use planning under the provisions of § 3420.1-4 of this title.

124. Section 3461.4-2 is revised to read:

§ 3461.4-2 Application of criteria on leased lands.

The unsuitability criteria shall not be applied to leased lands.

§ 3461.5 [Removed]

125. Section 3461.5 is removed in its entirety.

§ 3461.6 Redesignated as § 3461.5 and Amended

126. Section 3461.6 is renumbered § 3461.5 and is amended by inserting after the word "mining", where it first appears in paragraph (a), the word "operations" and by adding at the end of paragraph (a) the phrase "and under 30 CFR 211.2(a)."

§ 3465.0-2 [Removed]

127. Section 3465.0-2 is removed in its entirety.

§ 3465.1 [Amended]

128. Section 3465.1(a) is amended by removing the phrase "permit (30 CFR Part 741)" and replacing it with the phrase "mining plan and mining permit (30 CFR Parts 211 and 741)".

§ 3465.2 [Removed]

129. Section 3465.2 is removed in its entirety.

§ 3465.3 Redesignated as § 3465.2

130. Section 3465.3 is renumbered § 3465.2

§ 3465.3-1 Redesignated as § 3465.2-1 and Amended

131. Section 3465.3-1 is renumbered § 3465.2-1 and is amended by removing the phrase "inspectors from the Surface Mining Officer" and replacing it with the

phrase "their authorized representatives".

§ 3465.3-2 Redesignated as § 3465.2-2

132. Section 3465.3-2 is renumbered § 3465.2-2.

§ 3465.3-3 Redesignated as § 3465.2-3 and Amended

133. Section 3465.3-3 is renumbered § 3465.2-3 and is amended by removing the phrase "30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D" and replacing it with the phrase "30 CFR Chapter VII, Subchapter D, or by the Mining Supervisor in accordance with 30 CFR Part 211."

§§ 3465.4, 3465.5, and 3465.6 [Removed]

134. Sections 3465.4, 3465.5 and 3465.6 are removed in their entirety.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

§ 3471.2-1 [Amended]

135. Section 3471.2-1 is amended by:

(a) Revising paragraph (b) to read:

(b) Any sale or conveyance of acquired lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under the Mineral Leasing Act for Acquired Lands.

(b) Amending paragraph (c) by removing the phrase "act subject in each case to such appropriate conditions as may be prescribed" and replacing it with the word "Act."; and

(c) Amending paragraph (d) removing the phrase "[43 CFR 3426.6]" at the end of the paragraph.

§ 3471.2-2 [Amended]

136. Section 3471.2-2(b) is amended by removing the first sentence of that paragraph.

§ 3471.3-1 [Removed]

137. Section 3471.3-1 is removed in its entirety.

§ 3471.3-2 Redesignated as § 3471.3-1 and Amended

138. Section 3471.3-2 is renumbered § 3471.3-1 and is amended by:

(a) Revising paragraph (b) to read:

(b) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws may be dismissed promptly as a party by showing the he/she holds and acquired his/her interest as a bona fide purchaser without having violated any provisions of the mineral leasing laws.

(b) Amending paragraph (c) by removing the phrase "during any such proceeding."

§ 3471.3-3 Redesignated as § 3471.2-3

139. Section 3471.3-3 is renumbered § 3471.2-3.

§ 3471.4 [Amended]

140. Section 3471.4 is amended by removing the phrase "(See 43 CFR 3472.1-1(g))" and replacing it with the phrase "(See 43 CFR 3472.1-2(g))".

§ 3472.1-2 [Amended]

141. Section 3472.1-2 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3472.1-2" and replacing it with the figure "§ 3472.1-3"; and

(b) Revising paragraph (e) to read:

(e) After August 4, 1986, no lease shall be issued to any applicant or bidder and no existing lease shall be assigned to any party that holds and has held for 10 years any lease from which coal is not being produced, except as authorized under 30 CFR Part 211, in commercial quantities as that term is defined in 30 CFR Part 211.

§ 3472.1-3 [Amended]

142. Section 3472.1-3 is amended by revising paragraph (b)(1) to read:

(b)(1) In computing acreage held, owned or controlled, the accountable acreage of a party holding, owning or controlling an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. Any subsidiary, affiliate or person controlled by or under common control with any corporation, person or association holding, owning or controlling a Federal coal lease shall be charged with lease acreage to the same extent as such corporation, person or association. The accountable acreage of a party holding, owning or controlling an interest in a corporation or association shall be that party's proportionate part of the acreage held, owned or controlled by such corporation or association. However, no party shall be charged with its pro rata share of any acreage held, owned or controlled by any corporation or association unless that party is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such corporation or association.

§ 3472.2-2 [Amended]

143. Section 3472.2-2 is amended by:

(a) Revising paragraph (c) to read:

(c) If the applicant or bidder for a lease or license to mine is a corporation, it shall submit statements showing:

- (1) The state of incorporation;
- (2) That the corporation is authorized to hold leases or licenses to mine;
- (3) The names of the officers authorized to act on behalf of the corporation;
- (4) The percentage of the corporation's voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and
- (5) The name, address, citizenship and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation shall provide their names and addresses, the amount of stock held by each such person, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. Applications on behalf of a corporation executed by other than an officer named under paragraph (c)(3) of this section shall be accompanied by proof of the signatory's authority to execute the instrument. The applicant shall submit the same information as is required in the preceding paragraph for any of its corporate stockholders holding, owning or controlling 10 percent or more of its stock of any class.

(b) Adding new paragraphs (f) and (g) to read:

(f) The Department reserves the right to request any supplementary information that is needed to accredit acreage under § 3472.1-3 of this title.

(g) Any applicant or bidder who has previously filed a qualification statement may, if it certifies that the prior statement remains complete, current and accurate, submit a serial number reference to the record and office where the prior statement is filed.

§ 3472.2-5 [Amended]

144. Section 3472.2-5(a) is amended by removing the figure "§ 3420.1-4" and replacing it with the figure "§ 3420.1-3" in the two places where it appears.

§ 3473.1-2 [Amended]

145. Section 3473.1-2(b) is amended by removing the phrase "Payments of all rentals" and replacing it with the word "Rentals" and by adding at the end of

the paragraph the phrase "unless terms of the lease provide otherwise."

§ 3473.2-1 [Amended]

146. Section 3473.2-1(a) is amended by revising subparagraph (3) to read:

- (a) * * *
- (3) A filing of fee of \$50 per lease shall accompany each instrument of transfer of a lease or an interest therein.

§ 3473.3-1 is amended by:

(a) Amending paragraph (b) by removing the phrase "production or advance"; and

(b) Adding a new paragraph (d) to read:

(d) Rentals paid for any lease year commencing prior to the effective date of the first lease readjustment occurring after August 4, 1976, shall be credited against royalties for that year. Rentals due and payable for any lease year commencing on or after the effective date of the readjustment shall not be credited against royalties.

§ 3473.3-2 [Amended]

148. Section 3473.3-2 is amended by:

- (a) Revising paragraph (a)(3) to read:
- (a) * * *
- (3) A lease shall require payment of a royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the Geological Survey may determine a lesser amount, but in no case less than 5 percent if conditions warrant.

(b) Revising paragraph (b) to read:

(b) The Mining Supervisor shall have the discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year in accordance with 30 CFR Part 211.

(c) Revising paragraph (c) to read:

(c)(1) An overriding royalty interest or production payment shall not be created by a lease transfer, surface owner consent, or otherwise that: (i) exceeds 50 percent of the rate of royalty first payable to the United States under the lease; or (ii) when added to any other overriding royalty interest, exceeds that percentage. When a lease or operating agreement is transferred, the transferor may retain an overriding royalty interest in excess of the above cited limitation if he/she shows to the satisfaction of the authorized officer that he/she has made substantial investments for

improvements on the lands covered by the transfer that would justify a higher payment.

(2) For the purpose of this section, only net profit share or other interest which is calculated directly on the basis of amount of production shall be considered an overriding royalty interest or production payment.

(d) Revising paragraph (d) to read:

(d) The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof. An application for any of these benefits shall be filed with the Mining Supervisor in accordance with 30 CFR 211.63.

§ 3473.4 [Amended]

149. Section 3473.4 is amended by:

(a) Amending paragraph (a) by adding at the end of the first sentence of the paragraph the phrase "in accordance with 30 CFR 211.63" and by removing the second sentence of the paragraph in its entirety; and

(b) Removing paragraphs (c), (d) and (e) in their entirety.

§ 3474.1 [Amended]

150. Section 3474.1 is amended by:

(a) Revising paragraph (a)(2) to read:

- (a) * * *
- (2) Cash bond; or

(b) Revising paragraph (c) to read:

(c) The bonding obligation for a new lease may be met by an adjustment to an existing LMU bond covering the other leases within the same LMU.

§ 3474.2 [Amended]

151. Section 3474.2 is amended by:

(a) Revising paragraph (a) to read:

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease, shall be furnished in the amount determined by the authorized officer. Except as provided in § 3474.3(b) of this title, that bond shall not cover reclamation within a permit area.

(b) Amend paragraph (b) by removing the figure "§ 3410.3-5" and replacing it with the figure "3410.3-4"; and

(c) Adding a new paragraph (c) to read:

(c) Upon approval of an LMU including more than 1 Federal lease, the lessee may, in lieu of individual lease bonds, furnish and maintain an LMU bond covering all of the terms and conditions of every Federal lease within the LMU, except for reclamation within the mining permit area unless the condition in § 3474.3(b) of this title applies. All LMU bonds shall be furnished in the amount recommended by the Mining Supervisor.

§ 3474.3 [Amended]

152. Section 3474.3 is amended by:

(a) Revising paragraph (b) to read:

(b)(1) In setting or adjusting individual lease bond amounts, the authorized officer shall assure that the lease bond covers reclamation within a permit area where the Surface Mining Officer, because of the absence of an interim program authority governing Federal lands within that state, notifies the authorized officer that the lease bond should cover that reclamation.

(2) After consultation with the Surface Mining Officer, the authorized officer may release the amount of any outstanding bond which related to, and is not necessary to secure, the performance of reclamation within a permit area.

(c) Removing paragraph (c) in its entirety.

153. Subpart 3475 is amended by inserting a new § 3475.1 to read:

§ 3475.1 Lease form.

Leases shall be issued on a standard form approved by the Director. The authorized officer may modify those provisions of the standard form which are not required by statute or regulations and may add such additional stipulations and conditions as he/she deems appropriate.

§§ 3475.1, 3475.2 and 3474.3 Redesignated as §§ 3475.2, 3475.3 and 3475.4

154. Sections 3475.1, 3475.2, and 3474.3 are renumbered sections 3475.2, 3475.3, and 3475.4 respectively.

§ 3475.4 Redesignated as § 3475.5

155. Section 3475.4 is renumbered § 3475.5 and is revised to read:

§ 3475.5 Diligent development and continued operation.

In accordance with 30 CFR Part 211, each lease shall require:

- (a) Diligent development; and
- (b) Either (1) continued operation except when operations under the lease are interrupted by strikes, the elements or casualties not attributable to the lessee, or (2) in lieu thereof, when the

Secretary determines that the public interest will be served, payment of an advanced royalty."

§ 3475.5 Redesignated as § 3475.6

156. Section 3475.5 is renumbered § 3475.6 and is revised to read:

§ 3475.6 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU shall be developed and applied by the

Geological Survey in accordance with 30 CFR 211.80

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with or are superseded by the requirements imposed on the LMU of which it has become a part.

(c) The holder of any lease issued or

readjusted between May 7, 1976, and the effective date of this regulation, whose lease provides by its own terms that it is considered to be an LMU, may request removal of this provision from any such lease. Such request shall be submitted to the authorized officer.

James G. Watt,

Secretary of the Interior.

November 19, 1981.

[FR Doc. 81-35938 Filed 12-15-81; 8:45 am]

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**Wednesday
December 16, 1981**

Part III

Department of the Interior

Geological Survey

Coal Exploration and Mining Operations

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 211

Coal Exploration and Mining Operations

AGENCY: Geological Survey, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rules in this Part delineate the functions and responsibilities of the U.S. Geological Survey (USGS) for regulating exploration for Federal coal and mining operations on Federal coal lands regarding production, development, resource recovery and protection, royalties, diligent development, continued operation, and maximum economic recovery (MER) under the Mineral Leasing Act of 1920, as amended (MLA). The proposed rules streamline and consolidate in this Part regulations previously promulgated by the Bureau of Land Management (BLM) and the Office of Surface Mining Reclamation and Enforcement (OSM) regarding USGS responsibilities under MLA for management of operations on Federal coal lands.

DATE: Interested persons may submit written comments on or before February 16, 1982.

ADDRESS: Comments should be addressed to Chief, Conservation Division, Attention: Chief, Branch of Coal Management (MS 653), U.S. Geological Survey, U.S. Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Comments will be available for public review at room 6A222 of the above address from 9 am to 3:30 pm on regular working days.

FOR FURTHER INFORMATION CONTACT: Mr. Robert O. Schrott, Acting Chief, Branch of Coal Management, Conservation Division, U.S. Geological Survey, Reston, Virginia 22092 (703) 860-7136; FTS: 928-7136.

SUPPLEMENTARY INFORMATION: On May 17, 1976, the Department of the Interior (DOI) published the 30 CFR Part 211 regulations (41 FR 20252) that govern operations for discovery, testing, development, mining, preparation, reclamation, and handling of coal under Federal leases, licenses, and permits issued for federally owned coal. On August 22, 1978, DOI modified those regulations in the *Federal Register* (43 FR 37181) to implement the initial regulatory program under Pub. L. No. 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), on Federal lands. On March 13, 1979, OSM published its final permanent regulatory

program 30 CFR Chapter VII regulations (44 FR 14902); these include provisions for a permanent Federal Lands Program (30 CFR Chapter VII, Subchapter D), that fully implements SMCRA on Federal lands. On December 31, 1979, these regulations were amended to postpone the implementation schedule for the permanent phase of the Federal Lands Program.

On May 19, 1980, DOI proposed revisions to the 30 CFR Part 211 regulations (rules) in the *Federal Register* (45 FR 32715). A public hearing on the proposed rules was held in Washington, D.C., on September 22, 1980. The comment period for the rules extended from May 19, 1980, to July 24, 1980, and was reopened from September 15 to September 29, 1980. The DOI received 26 sets of comments from private mining companies, Federal Agencies, law firms, public interest groups, and trade organizations. The USGS has revised the proposed rules, as appropriate, to reflect the substantive concerns expressed in the comments.

In response to the direction of the Secretary of the Interior, USGS is reviewing and identifying those regulations which are excessive, burdensome, and counterproductive. Accordingly, these proposed rules contain changes in the existing policies and regulations regarding logical mining units (LMUs), MER, and royalties. The proposed rules also incorporate, as appropriate, the comments received in response to the Secretary of the Interior's January 1981 request for public comments. Through these revisions, USGS seeks to achieve the goal of making DOI's coal management rules responsive to the overall needs for coal while providing for balanced management of the Nation's resources.

All written comments received between September 29, 1980, and the close of the comment period on this second proposed rulemaking will be considered to be part of the second proposed rulemaking record and will be available for public review at the place and times set forth in the "ADDRESS" section above.

This proposed revision of 30 CFR Part 211: (1) Separates responsibilities under SMCRA for mining on Federal lands (30 CFR Chapter VII, Subchapter D) from the requirements and responsibilities of USGS under MLA; (2) retains and clarifies USGS responsibilities under requirements of MLA and the 30 CFR Part 211 regulations of May 17, 1976, and August 22, 1978, for exploration, production, development, resource recovery and protection, and royalties; (3) revises and clarifies the existing regulations and requirements of the

Federal Coal Leasing Amendments Act of 1976 (FCLAA) for MER, resource recovery and protection plans, and LMUs; and (4) deletes the regulations in 30 CFR Part 211 relating to the initial Federal Lands Program under SMCRA.

Note.—Until final rulemaking is promulgated by OSM regarding the initial Federal Lands Program, the existing 1980 30 CFR Part 211 rules regarding OSM's initial Federal Lands Program shall remain in effect.

Responsibilities Under the Mineral Leasing Act

The MLA has been amended numerous times, but most recently by FCLAA (Pub. L. No. 94-377) and by Pub. L. No. 95-554. For the purposes of this preamble, we refer to MLA and its amendments as MLA. The DOI is responsible for management of mining operations on Federal coal pursuant to the requirements of MLA. The USGS exercises the Secretary of the Interior's authority to enforce the regulations related to coal mining operations for MLA requirements concerning production, development, resource recovery and protection, MER, diligent development, continued operation, and rentals and royalties on producing leases. The proposed rules delineate those responsibilities and requirements and clarify certain sections of the existing regulations.

Transfer of Certain Responsibilities to Department of Energy

The Department of Energy (DOE) Organization Act transferred from DOI to DOE the responsibilities for establishing rules for diligence requirements for Federal coal leases. The DOE has the authority to promulgate diligence rules for Federal coal leases. Those rules will be codified at 10 CFR Part 378. The USGS has the authority to enforce the diligence rules.

Relation to OSM's Federal Lands Program

These proposed rules no longer contain the regulations in the 1980 30 CFR Part 211 rules relating to the initial Federal Lands Program under section 523 of SMCRA. Those rules will be published, as appropriate, by OSM at 30 CFR Chapter VII.

These proposed rule changes are intended to eliminate any duplication of effort by USGS, OSM, and the States regarding management of exploration and mining operations that involve Federal coal.

Resource Recovery and Protection Plans

These proposed rules define a resource recovery and protection plan to

be the plan required by section 7(c) of MLA. If the operator/lessee is prepared to submit the SMCRA permit application package that includes both the "reclamation plan" (section 508(a) of SMCRA) and the resource recovery and protection plan (30 CFR 211.10(b)) within the 3-year period, the permit application package is submitted to the regulatory authority. If a resource recovery and protection plan is solely to meet the 3-year submittal deadline under MLA, the resource recovery and protection plan is submitted to the District Mining Supervisor and addresses the requirements of 30 CFR 211.10(b). Upon receipt of a resource recovery and protection plan, the District Mining Supervisor will review such plan for completeness and for compliance with MLA. The resource recovery and protection plan will become a part of the permit application package which will also contain the reclamation plan pursuant to SMCRA. The permit will be issued by the regulatory authority when all parts of the permit application package have been approved by the Secretary of the Interior.

The DOI will ensure that the two elements of the permit application package—the reclamation plan under SMCRA and the resource recovery and protection plan under MLA—will not be duplicative. At the time of approval of the permit application package, both the resource recovery and protection plan and the reclamation plan will address the same proposal of the operator/lessee. The permit application package including the reclamation plan requirements will be contained in the rules of the regulatory authority under SMCRA. The relationship between the reclamation plan and the resource recovery and protection plan also will be further defined in forthcoming revisions of OSM rules.

Streamlining and Consolidation

The proposed rules streamline and consolidate in this Part the regulations of BLM and OSM regarding USGS responsibilities for Federal coal.

Sections or paragraphs of BLM regulations which are consolidated in these proposed rules include:

1. 43 CFR 3400.0-5 *Definitions*. The definitions of contiguous, exploration plan, LMU, LMU coal reserves, MER, and coal reserves have been revised and consolidated in this Part.

a. These proposed rules revise the definition of MER by eliminating the term "opportunity costs."

In order to analyze opportunity costs in an MER determination, considerable economic data would be required in a resource recovery and protection plan

submittal. A company would have to submit alternative income-producing or expense-reducing possibilities in order for DOI to assess the opportunity costs. The DOI considers the requirement that all operators/lessees submit such additional data to be unduly burdensome to both the mining industry and DOI. To analyze opportunity costs, DOI would have to develop, on a case-by-case basis, the alternatives available to a company and compare them with the alternatives presented by a company. Such analysis would be extremely complex and time-consuming. The DOI's analysis of a company's opportunity costs may differ greatly from the company's own analysis of its opportunity costs due to the volatile nature of national economic conditions, and legitimate differences in investment practices and philosophies. Consequently, DOI considers opportunity-costs analysis to be unduly difficult and potentially inequitable, and has removed the term from the definition of MER. In addition, the phrase "or equal to" has been deleted. The DOI does not intend to use MER to force any operator/lessee to produce coal at the exact break-even point.

In choosing the methodology for determining MER, DOI considered approaches based on economic data and standard industry practices. The DOI has decided to determine MER primarily on the basis of standard industry practices, supplemented by economic data as necessary. This approach is less burdensome to the mining industry and more administratively efficient, and provides a satisfactory basis from which the District Mining Supervisor can ensure that the resource recovery and protection plan will achieve MER.

Under this approach, USGS primarily will make the MER determination based on the mine design submitted in the resource recovery and protection plan. The DOI believes that this approach will work equally well for captive and noncaptive operations. Where a resource recovery and protection plan shows total extraction mining of all coal beds, the plan itself shows MER will be achieved and no additional data for MER will be required. Where a resource recovery and protection plan does not show total extraction mining of all coal beds or portions thereof, the resource recovery and protection plan will be analyzed by USGS for its conformance with standard industry practices, many of which are dependent on economic conditions for similar operations. The USGS will consider mining and geologic factors. For example, some of the factors considered for a surface mine would be stripping ratio; highwall limit;

interburden thickness; recovery rate; and coal thickness, quality and value. For an underground mine, some of the factors considered would be recovery rate; mining height; overburden and interburden; coal thickness, quality and value; and engineering or safety factors that govern recovery of specific coal beds. Where the analysis indicates that the operator/lessee's mine design does not conform to standard industry practices in the region, USGS may require the operator/lessee to submit additional data to justify specific parts of the mine design. Such requests, as warranted, would be on a case-specific basis.

The USGS does not intend to require every operator/lessee to submit additional data to justify MER. Additional data for MER will be requested only where some condition appears to be out of the ordinary in the resource recovery and protection plan or where wasting of coal is evident. Standard industry practices will be used as the primary basis for determining MER; but, it must be stressed that conformity with standard industry practices is not dispositive of MER and variances from the practices may be required where case-specific conditions warrant such a variance. The DOI does not intend to use MER to force a company to mine Federal coal reserves at a loss or to mine Federal coal that cannot be sold under existing market conditions. The burden of establishing MER is on the operator/lessee.

Additionally, USGS is considering, and thus is specifically requesting comments on, the following alternative definition for MER:

Maximum economic recovery (MER) at the times of its determinations means that, after considering existing technology; commercially available equipment; quality, quantity, and marketability of the coal; and mine safety considerations, each coal bed that is profitable, using standard industry operating practices, must be mined. The requirement of MER in no way restricts the authority of the District Mining Supervisor to ensure conservation of the coal reserves and other resources and prevention of wasting of coal.

b. The definition of LMU has been revised to eliminate the implication that all lands within an LMU must be underlain by coal. The revised definition states that an LMU is an area of land that can be developed and mined for coal in an efficient, economical, and orderly manner with due regard for conservation of coal reserves and other resources.

c. The definition of contiguous also has been revised to eliminate the

implication that all land within an LMU must be underlain by coal. The revised definition is based on legal subdivisions and provides that physical or legal divisions such as burn lines or rights-of-way do not destroy the concept of contiguity. The DOI currently is examining whether legal subdivisions control the definition of contiguous.

2. 43 CFR Part 3473 *Fees, Rentals and Royalties*. The royalty provisions of this section have been revised and consolidated in this part. The USGS solicits comments on the following proposals that are being considered:

a. The USGS considered the exclusion of all Federal royalties and Federal fees from the calculation of gross value of the coal for royalty purposes. This proposed rulemaking does not incorporate this exclusion. The gross value is defined to be the unit sale or contract price times the number of units sold, essentially the same definition as currently implemented. The USGS solicits comment on this provision.

b. The value of coal for the purpose of advance royalty payment will be calculated in the manner provided in 30 CFR 211.63, whether or not the preceding production was from a Federal lease in the LMU.

c. The DOI views the requirement for a limit on the amount of any overriding royalty as an essential feature of MLA responsibilities for conservation of coal reserves and other resources. The existing overriding royalty provision has been expanded to reflect recent legal opinions and interpretations. The expansion includes production payments, except those created in order to finance a mine, direct or indirect net profit shares or other interests. The USGS especially solicits comments on this requirement and expansion.

d. Revision of the royalty reduction provisions.

3. 43 CFR 3475.4 *Diligent development and continued operation*. The authority to promulgate diligent development and continued operation requirements for Federal coal leases was transferred to DOE by the DOE Organization Act. At the time or readjustment, the lessor can revise the lease terms and obligations consistent with MLA, the rules then in effect, and procedural due process. For the purposes of determining that a lease has met diligent development, and therefore is subject to continued operation, all lease coal reserves shall be included in the coal reserves estimates.

4. 43 CFR 3475.5 *Logical mining units*. The proposed rules significantly change the concept of and procedures for LMU's. The changes include:

a. Abolishing the requirement that each lease is automatically considered to be an LMU on June 1, 1976, or upon the effective date of the lease (43 CFR 3475.5(a)). Therefore, the 40-year LMU coal reserves exhaustion requirement no longer applies to leases. For leases containing this lease term, at the request of the operator/lessee to the authorized officer, DOI will modify the lease to remove the 40-year LMU coal reserves exhaustion requirement.

b. An LMU will be created only upon the request of an operator/lessee or at the specific direction of the District Mining Supervisor under section 2(d) of MLA (30 U.S.C. 202a(6)).

c. The lease terms of individual Federal leases consolidated in an LMU will be revised in order to ensure that mining under the individual leases will be consistent with the requirements for the approval of the LMU. Rental and royalty rates for the individual leases will not be altered prior to lease readjustment under section 7 of MLA (30 U.S.C. 207(a)).

d. The 40-year LMU coal reserves exhaustion requirement will begin the date that coal is produced from the LMU, as determined during the first royalty reporting period following such date.

Exploration on Federal Lands

The USGS will administer all exploration activities for Federal coal. Existing exploration responsibilities for Federal coal under 30 CFR Chapter VII have been transferred to USGS. The regulatory authority retains the responsibility for exploration for non-Federal coal contained in an approved permit area. Applications for exploration for leased Federal coal will be submitted to the District Mining Supervisor who shall make any necessary consultations. For Federal coal which has not been leased, USGS will administer exploration activities after an exploration license has been issued pursuant to 43 CFR Part 3410. No exploration may commence for Federal coal unless the District Mining Supervisor approves an exploration plan as provided for in these proposed rules.

The roles of the State regulatory authority and the USGS as they relate to exploration activities on Federal lands continue to be an extremely complicated regulatory subject. The issues which have been raised are legally, administratively, and technically complex. Some of these issues include checkerboard ownership patterns, funding and administering drilling programs, handling proprietary data, and potentially duplicative permitting and reclamation enforcement

responsibilities. While DOI feels that the method presented in these rules is workable and legally defensible it is not the only possible option. The DOI specifically solicits comments on the State and USGS roles as they relate to exploration on Federal lands.

Additionally, the USGS is evaluating procedures which would allow selected State agencies limited access to proprietary data held by USGS. Completion of the usual secondary office of control documents would be required of anyone gaining access, as would the standard penalties for any subsequent unauthorized disclosure of proprietary data. The USGS solicits comment on this procedure.

Other Information

The requirements of General Mining Order No. 1 will be considered for revision upon promulgation of these proposed rules as final rulemaking. Pursuant to the Regulatory Flexibility Act (Pub. L. No. 96-354), functions, responsibilities, and requirements for coal mining operations on Federal lands are referred to as "rules" rather than "regulations." References to the term "regulations" in this supplementary information apply to the historical use of that term in the previous versions of 30 CFR Part 211.

It is hereby determined that these rules do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The environmental assessment that substantiates this conclusion is available for public review at the place and times set forth in the "ADDRESS" section above.

The information collection requirement contained at 30 CFR 211.62(c)(1) has been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned OMB approval number 1028-0001 which expires December 31, 1982. The information collection requirements contained in all the remaining sections of 30 CFR Part 211 (except 30 CFR 211.62(c)(1) as noted above) have been submitted to OMB for approval as required by 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by OMB. Additionally, USGS specifically solicits comments on the contents and requirements for exploration plans (30 CFR 211.10(a)), resource recovery and protection plans (§ 211.10(b)), and mining operations maps (30 CFR 211.12).

The DOI has determined that this document is not a major rule under Executive Order 12291 and will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354). The Determination of Effects of Rules that substantiates this conclusion is available for public review at the place and times set forth in the "ADDRESS" section above.

Preparation of these proposed rules is under the responsibility of Robert O. Schrott, Acting Chief, Branch of Coal Management, Conservation Division, U.S. Geological Survey, Reston, Virginia 22092.

Primary Authors

The primary authors of these proposed rules are Allen B. Agnew, Thomas V. Leshendok, Harold W. Moritz, and Wright C. Sheldon, Conservation Division, USGS, assisted by DOI's Solicitor's office, and other USGS and DOI staff.

Part 211, Chapter II, Title 30 of the Code of Federal Regulations is revised as set forth below.

PART 211—COAL EXPLORATION AND MINING OPERATIONS RULES

General

- Sec.
- 211.1 Scope, purpose, and responsibilities.
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- 211.70 Inspections.
- 211.71 Notices and orders.
- 211.72 Enforcement.
- 211.73 Appeals.

Logical Mining Units

- 211.80 Logical mining units.

Authority: The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands, as

amended (30 U.S.C. 351-359); and the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

General

§ 211.1 Scope, purpose, and responsibilities.

(a) *Scope.* The rules of this part shall govern operations for the exploration, development, mining, preparation, and handling of coal under Federal leases, licenses, and permits, regardless of surface ownership, pursuant to the Mineral Leasing Act of 1920, as amended (MLA), and in conjunction with the regulations in 43 CFR Group 3400 and 30 CFR Chapter VII. Except as otherwise provided in 25 CFR Chapter I or Indian lands leases, these rules do not apply to operations on Indian lands. The provisions in these rules relating to advance royalty, diligent development, continued operation, maximum economic recovery (MER), and logical mining units (LMU's) shall not apply to Indian lands leases and permits. The rules governing exploration for unleased Federal coal are codified at 43 CFR Part 3410 (Exploration Licenses). Until final rulemaking is promulgated by the Office of Surface Mining Reclamation and Enforcement (OSM) regarding the initial Federal Lands Program, the existing 1980 30 CFR Part 211 rules regarding OSM's initial Federal Lands Program shall remain in effect.

(b) *Purpose.* The purposes of the rules of this part are to ensure orderly and efficient development, mining, preparation, and handling operations; ensure production practices that prevent wasting or loss of coal or other resources; avoid unnecessary damage to coal-bearing or mineral-bearing formations; ensure MER of coal reserves; ensure that operations meet requirements for diligent development and continued operation; ensure resource recovery and protection plans are submitted and approved in compliance with MLA; ensure effective and reasonable regulation of surface and underground coal mining operations; require an accurate record and accounting of all coal produced; ensure efficient, environmentally sound exploration and mining operations; and eliminate duplication of efforts by the U.S. Geological Survey (USGS), OSM, and the States in the Federal coal program.

(c) *Responsibilities of Other Federal Agencies.*—(1) *Office of Surface Mining Reclamation and Enforcement.* The responsibility for administration of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1201 et seq.) is vested in OSM.

(2) *Mine Safety and Health Administration.* The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969, as amended (83 Stat. 742), and the coal mine health and safety rules contained in Chapter I of this Title are vested in the Mine Safety and Health Administration (MSHA), Department of Labor.

(3) *Bureau of Land Management.* The responsibility for the issuance of exploration licenses for unleased Federal coal, the issuance of licenses to mine, and the issuance, readjustment, modification, termination, cancellation, and/or approval of transfers of Federal coal leases pursuant to MLA and the Mineral Leasing Act for Acquired Lands of 1947, as amended, is vested in the Bureau of Land Management.

(4) *Department of Energy.* The responsibility for promulgating rules for diligence was transferred to the Department of Energy (DOE) by the DOE Organization Act (42 U.S.C. 7152 and 7153). The Department of the Interior has the authority to enforce such rules established by DOE.

(d) *Effective Date.* These rules, when finalized, will be effective 30 days after publication as final rulemaking.

§ 211.2 Definitions.

(a) As used in the rules of this part, the following terms shall have the following meanings:

(1) *Advanced royalty* means a payment under a lease in advance of actual production authorized by the District Mining Supervisor to be made in lieu of continued operation.

(2) *Assistant Secretary for Energy and Minerals* means Assistant Secretary for Energy and Minerals, or designee, Department of the Interior.

(3) *Coal reserve base* means the tons of coal in place contained in beds of (i) metallurgical or metallurgical-blend coal 12 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick to a depth of 500 feet below the lowest surface elevation on the lease; (ii) metallurgical and metallurgical-blend coal 24 inches or more thick; anthracite, semianthracite, bituminous and subbituminous coal 48 inches or more thick; and lignite 84 inches or more thick occurring from 500 to 3,000 feet below the lowest surface elevation on the lease; (iii) any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet below the lowest surface elevation on the lease.

which is currently being mined or for which there is evidence that such coal bed could be mined commercially at this time; and (iv) coal at a depth greater than 3,000 feet where mining actually is to occur. Coal reserve base includes measured, indicated, and inferred reserve categories.

(4) *Coal reserves* means the tons of coal that can be mined commercially under existing technology and economics. It does not include coal that will be left in pillars, fenders, property barriers, or other areas where mining is not permissible. In these rules, the terms "coal reserves" and "recoverable coal reserves" are used interchangeably. Recoverable coal reserves include the measured, indicated, and inferred reserve categories. (See also the definition of logical mining unit (LMU) coal reserves.)

(5) *Conservation Manager* means Conservation Manager, or designee, Conservation Division, U.S. Geological Survey (USGS), Department of the Interior.

(6) *Contiguous* means having at least one point in common, including cornering tracts. Intervening physical separations such as burn lines and intervening legal separations such as rights-of-way do not destroy contiguity as long as legal subdivisions have at least one point in common.

(7) *Continued operation year* means the 12-month period beginning the first royalty reporting period following the date that diligent development is achieved, and each 12-month period thereafter.

(8) *Deputy Conservation Manager—Mining* means Deputy Conservation Manager—Mining, or designee, Conservation Division, USGS, Department of the Interior.

(9) *Development* means activities conducted by an operator/lessee after approval of a permit application package to prepare a mine for commercial production.

(10) *Director* means Director, or designee, USGS, Department of the Interior.

(11) *District Mining Supervisor* means District Mining Supervisor, or designee, Conservation Division, USGS, Department of the Interior.

(12) *Division Chief* means Chief, or designee, Conservation Division, USGS, Department of the Interior.

(13) *Exploration* means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of Federal coal deposits and their environment including the strata below the Federal coal deposits, overburden

and strata above the Federal coal deposits, and the hydrologic conditions associated with the Federal coal deposits.

(14) *Exploration plan* means a detailed plan to conduct exploration; it shows the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

(15) *General Mining Order* means any formal numbered order, issued by the District Mining Supervisor, which is published in the Federal Register after opportunity for public comment. These orders implement the rules of this part and apply to coal mining and related operations.

(16) *Gross value*, for the purpose of royalty calculations, means the unit sale or contract price times the number of units sold, subject to the procedures in 30 CFR 211.63(g) under which gross value is determined.

(17) *License* means a license to mine coal pursuant to the provisions of 43 CFR Part 3440, or an exploration license issued pursuant to the provisions of 43 CFR Part 3410.

(18) *Logical mining unit (LMU)* means an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. An LMU may consist of one or more Federal leases and may include intervening or adjacent lands in which the United States does not own the coal resources, but all lands in an LMU shall be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous. An LMU must provide for the complete extraction of the LMU coal reserves within 40 years after production of coal commences. No LMU shall exceed 25,000 acres, including both Federal and non-Federal lands. A single operation may include a series of excavations.

(19) *Logical mining unit (LMU) coal reserves* means the sum of estimated Federal and non-Federal recoverable coal reserves in the LMU. The LMU coal reserves are those estimated as of the effective date of LMU approval, except that the amount of LMU coal reserves may be adjusted by the District Mining Supervisor as provided in 30 CFR 211.80. These LMU coal reserves estimates may be adjusted as new information becomes available.

(20) *Maximum economic recovery (MER)* means that, after safety factors are taken into account, all portions of

the coal deposit within a Federal lease shall be mined that have a private incremental cost of recovery (including reclamation costs) less than the market value of the coal. The requirement of MER in no way restricts the authority of the District Mining Supervisor to ensure conservation of coal reserves and other resources and prevention of wasting of coal.

(21) *Methods of operation* means the methods and manner, described in an exploration or resource recovery and protection plan, by which exploration or development activities are performed by the operator/lessee.

(22) *Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal.

(23) *Minable reserve base* means the tons of coal, contained in the leased lands or lands included in an LMU, of a thickness which is commercially minable with no deductions for coal to be left in pillars, fenders, property barriers, or other areas where mining is not permissible.

(24) *MLA* means the Act of February 25, 1920, as amended, commonly referred to as the Mineral Leasing Act (30 U.S.C. 181 et seq.).

(25) *Notice of availability* means formal notification, by the District Mining Supervisor to appropriate Federal, State, and local government agencies; to the surface and mineral owners; and to the public through posting a notice in the appropriate county clerk's office, of the availability for inspection, at the appropriate office, of an application for the establishment of an LMU. The notice will define adequately the proposed action, establish a specific time limit for public review and comment, and provide that a public hearing will be held at the request of anyone adversely affected by the proposed action.

(26) *Operator/lessee* means lessee, licensee, and/or one conducting operations on a lease or license under a written contract or written agreement with the lessee or licensee.

(27) *Permanent abandonment of exploration operations* means the completion of all activities conducted under an approved exploration plan, including plugging of all drill holes, submittal of required records, and reclamation of all disturbed surfaces.

(28) *Permanent abandonment of mining operations* means the completion of all development, production, and resource recovery and protection

requirements conducted under an approved resource recovery and protection plan.

(29) *Preparation* means physical or chemical treatment to prepare coal for market or to remove noncoal waste and other impurities in order to enhance the quality and therefore the value of the coal. Treatment includes crushing, sizing, drying, cleaning, mixing, or other processing.

(30) *Production* means extraction of coal and/or commercial byproducts from a mine using surface, underground, auger, or *in situ* methods.

(31) *Resource recovery and protection* includes practices to recover efficiently the coal reserves subject to these rules; avoid wasting or loss of coal or other resources; prevent damage to or degradation of coal-bearing or mineral-bearing formations; ensure MER of the coal reserves; and ensure that other resources are protected upon abandonment.

(32) *Resource recovery and protection plan* means a plan showing that the proposed operation meets the requirements of MLA for development, production, resource recovery and protection, diligent development, continued operation, MER, and the rules of this part for the life of the mine.

(33) *Secretary* means Secretary, or designee, Department of the Interior (DOI).

(34) *Subsidence* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent settling or caving of strata lying above the mine.

(b) The following shall have the meanings as defined at 43 CFR 3400.0-5:

Authorized officer
Lease

(c) The following shall have the meanings as defined at 30 CFR Chapter VII:

Alluvial valley floors
Federal lands
Federal Lands Program
Ground water
Office
Overburden
Permit
Permit application package
Permit area
Reclamation plan
Regional Director
Regulatory authority
Roads
Spoil

(d) The following shall have the meanings as defined at 10 CFR Part 378:

Commercial quantities
Continued operation
Diligent development
Diligent development period

§ 211.3 General responsibilities.

(a) The USGS has the general responsibility to administer MLA with respect to coal mining, production, and resource recovery and protection operations on Federal leases and licenses, to supervise coal exploration operations.

(b) Subject to the supervisory authority of the Secretary, the rules of this part and 10 CFR Part 378 shall be administered by the Director, through the Division Chief, Conservation Manager, Deputy Conservation Manager—Mining, and District Mining Supervisor.

(c) The Conservation Manager, Deputy Conservation Manager—Mining, and/or District Mining Supervisor are empowered to oversee exploration, development, production, resource recovery and protection, diligent development, continued operation, preparation, handling, production rental and royalty collection, and abandonment operations subject to the rules of this Part, and shall be responsible for the following:

(1) *Exploration plans.* Approve, disapprove, approve upon condition, or require modification to exploration plans.

(2) *Resource recovery and protection plans.* Recommend to the Assistant Secretary for Energy and Minerals the approval, disapproval, or approval upon condition of resource recovery and protection plans regarding development, production, resource recovery and protection, diligent development, continued operation, royalty, and the rules of this part and 10 CFR Part 378.

(3) *LMU applications.* Approve, disapprove, or approve upon condition LMU applications or modifications thereto; direct the establishment of LMU's in the interest of conservation of coal reserves and other resources; conduct public hearings as appropriate; recommend amendments to lease terms when determined necessary to ensure consistency with LMU stipulations; monitor and ensure compliance with LMU stipulations, the rules of this part and 10 CFR Part 378; and require reports and information for the establishment of an LMU.

(4) *Inspection of operations.* Examine as frequently as necessary, but at least quarterly, leased or licensed lands where operations for exploration, development, production, preparation, and handling of coal, resource recovery and protection, diligent development, continued operation, and collection of rentals and royalties on producing leases are conducted or are to be conducted; inspect such operations for the purpose of determining whether

wasting or degradation of other resources or damage to formations and deposits or nonmineral resources affected by the operations is being avoided or minimized; and determine whether there is compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of leases and licenses, and all requirements of approved exploration or resource recovery and protection plans.

(5) *Compliance.* Require operators/lessees to conduct operations subject to the rules of this part and 10 CFR Part 378 in compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of leases and licenses under MLA requirements, and approved exploration or resource recovery and protection plans for requirements of production, development, resource recovery and protection, MER, diligent development, continued operation, and collection of rentals and royalties on producing leases upon commencement of production.

(6) *Records of rentals and royalties on producing leases.* Obtain copies of and audit coal production and sales records; determine rental and royalty liability of operators/lessees, including establishment of the gross value of the coal in absence of arms-length transactions; collect and deposit rental and royalty payments; and maintain rental and royalty accounts.

(7) *Waiver, suspension, or reduction of rentals on producing leases, or reduction of royalties on producing leases.* Receive and act on applications for waiver, suspension, or reduction of rentals, and receive and act on applications for reduction of royalties, but not advance royalty, filed pursuant to the rules of this part.

(8) *Suspension of operations and production.* Receive and act on applications for suspension of operations and/or production filed pursuant to the rules of this part and 10 CFR Part 378 and, when appropriate, terminate suspensions which have been granted, provided that approval of a suspension of operations and production shall not preclude the regulatory authority from requiring the operator/lessee to continue to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, an approved State program, and the rules of this part.

(9) *Cessation and abandonment.* Upon receipt of notice of proposed abandonment or upon relinquishment of a lease or license, conduct an inspection to determine whether all rentals and royalties on producing leases due the lessor have been paid and the

applicable development, production, resource recovery and protection, abandonment, and royalty requirements of the lease or license have been met.

(10) *Wells or prospect holes.* Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might occur as a result of any wells or prospect holes drilled to, or through, the coal-bearing formations for any purpose under an approved exploration plan.

(11) *Trespass.* Report to the authorized officer, with a copy to the regulatory authority, any trespass on Federal lands that involves exploration activities or removal of unleased Federal coal, determine the quantity of coal removed, and determine the amount of trespass damages.

(12) *Extensions of diligent development.* Receive and act on applications by the operator/lessee for extension of the date for achieving diligent development and for suspension of continued operation, and coordinate review of submission of applications with the authorized officer.

(13) *Water and air quality.* Inspect exploration operations to determine compliance with air and surface and ground water pollution control measures required by the terms and conditions of applicable leases, licenses or approved exploration plans, and promptly notify appropriate representatives of the regulatory authority and Federal Agencies in the event of any noncompliance.

(14) *Implementation of regulations.* Issue General Mining Orders and other orders for enforcement, make determinations, and grant consents and approvals as necessary to implement or ensure compliance with the rules of this part and 10 CFR Part 378. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(15) *Lease bonds.* (i) Determine whether the total amount of lease bond with respect to operations under the rules of this part is adequate at all times to satisfy the reclamation requirements of the exploration plan.

(ii) Determine whether the total amount of any bond furnished with respect to operations subject to the rules of this part and 10 CFR Part 378 is at all times adequate to satisfy the requirements of the lease or license relating to development, production, resource recovery and protection, and payments of rentals and royalties on producing leases.

(iii) Notify the authorized officer of determinations under paragraph (c)(15)(i) and (ii) of this section.

§ 211.4 General obligations of the operator/lessee.

(a) The operator/lessee shall conduct exploration activities, reclamation, and abandonment of exploration operations for Federal coal pursuant to the performance standards of the rules of this part, 30 CFR 815.15 (OSM Permanent Program Performance Standards—Coal Exploration) or any applicable requirements of an approved State program, the terms and conditions of the lease or exploration license, the requirements of the approved exploration plans, and orders issued by the District Mining Supervisor.

(b) The operator/lessee shall conduct surface and underground coal mining operations involving development, production, resource recovery and protection, and preparation and handling of coal in accordance with the rules of this part, terms and conditions of the leases or licenses, the approved resource recovery and protection plan, any orders issued by the District Mining Supervisor, and 10 CFR Part 378.

(c) The operator/lessee shall prevent wasting of coal and other resources during exploration, development, and production and shall adequately protect the coal reserves and other resources upon abandonment.

(d) The operator/lessee shall immediately report to the District Mining Supervisor any conditions or accidents causing severe injury or loss of life related to the resource recovery and protection plan or threatening significant loss of coal reserves or damage to the mine, the lands, or other resources, including, but not limited to, fires, bumps, squeezes, highwall caving, landslides, inundation of mine with water, and gas outbursts, along with corrective action initiated. Within 30 days after such accident, the operator/lessee shall submit a detailed report of damage caused by such accident and of the corrective action taken.

(e) The principal point of contact for the operator/lessee with respect to any requirement of the rules of this part and 10 CFR Part 378 shall be the District Mining Supervisor. All reports, plans, or other information required by the rules of this part and 10 CFR Part 378 shall be submitted to the District Mining Supervisor.

(f) The operator/lessee shall provide the District Mining Supervisor free access to the Federal premises, even if access exists only through privately owned surface or coal.

§ 211.5 Procedures and public participation.

(a) *Written findings.* All major decisions and determinations of the

Conservation Manager, Deputy Conservation Manager—Mining, and/or District Mining Supervisor shall be in writing; shall set forth with reasonable detail the facts and rationale upon which such decisions or determinations are based; and shall be available for public inspection, pursuant to 30 CFR 211.6, during normal business hours at the appropriate office.

(b) *Logical mining units (LMU's).*—(1) *Availability of LMU proposals.* Applications for the approval of an LMU or modification thereto submitted under 30 CFR 211.80, or a proposal by the District Mining Supervisor to establish an LMU, shall be available for public inspection, pursuant to 30 CFR 211.6, in the office of the District Mining Supervisor. A notice of the availability of any proposed LMU or modification thereto shall be prepared immediately by the District Mining Supervisor, promptly posted at his office, and mailed to the surface and coal owners, if other than the United States; appropriate State and Federal Agencies; and the clerk or other appropriate officer of the county in which the proposed LMU is located. The notice will be posted or published in accordance with the procedures of such offices. The notice shall be submitted by the District Mining Supervisor to a local newspaper of general circulation in the locality of the proposed LMU for publication at least once a week for 2 weeks consecutively.

(2) *Notice of proposed decision.* Prior to the final approval or establishment of any LMU, the District Mining Supervisor shall have the proposed decision published in a local newspaper of general circulation in the locality of the proposed LMU at least once a week for 2 weeks consecutively and shall not approve the application for at least 30 days after the first publication of the proposed decision. Such notice may be published concurrently with the notice of availability.

(3) *Public participation.* A public hearing shall be conducted upon the receipt by the District Mining Supervisor of a written request from any person having a direct interest which is or may be affected adversely by approval of the proposed LMU, provided that the written request is received within 30 days after the first publication of the notice of proposed decision in a newspaper of general circulation in the locality of the proposed decision. A complete transcript of any such public hearing, including any written comments submitted for the record, shall be kept and made available to the public during normal business hours at the office of

the District Mining Supervisor that held the hearing, and shall be furnished at cost to any interested party. In making any decision or taking any action subsequent to such public hearing, the District Mining Supervisor shall take into account all testimony presented at the public hearing.

§ 211.6 Confidentiality.

(a) Information on file with USGS obtained pursuant to the rules of this part and 10 CFR Part 378 shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR Part 2, except that:

(1) Information such as geologic and geophysical data and maps pertaining to Federal coal reserves obtained from exploration licensees under the rules of this part or 43 CFR Part 3410 shall not be disclosed except as provided in 43 CFR 2.20(c).

(2) Information obtained from an operator/lessee under the rules of this part that constitutes trade secrets and commercial or financial information which is privileged or confidential or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data and maps, shall not be available for public inspection or made public or disclosed without the consent of the operator/lessee.

(3) Upon termination of a lease, whether by expiration of its terms or otherwise, such geologic and geophysical data and maps shall be made available to the public.

(4) Upon issuance or readjustment of a lease, the estimated lease coal reserves figure shall be made available to the public if such a release has been included as a lease term.

(b) Information requested to be kept confidential under this section shall be clearly identified by the licensee or operator/lessee by marking each page of documents submitted with the words "CONFIDENTIAL INFORMATION" at the top of the page. All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection, except as stated in 30 CFR 211.6(a) for data submitted prior to the effective date of these rules.

§ 211.10 Exploration and resource recovery and protection plans.

(a) *Exploration plans.* For background and application procedures for exploration for unleased Federal coal, see 43 CFR Part 3410. For any

exploration for Federal coal, the following rules apply:

(1) Except for casual use, before conducting any exploration operations on leased or licensed lands, the operator/lessee shall submit an exploration plan to and obtain approval from the District Mining Supervisor. Casual use, as used in this paragraph, means activities which do not cause significant surface disturbance or damage to lands or other resources and improvements, such as activities which do not include use of heavy equipment or explosives or vehicular movement off established roads and trails. The operator/lessee shall submit five copies of exploration plans to the District Mining Supervisor. Exploration plans shall be consistent with and responsive to the requirements of the lease or license for the protection of coal reserves and other resources and for the reclamation of the surface of the lands affected by the operations. The exploration plan shall show that reclamation is an integral part of the proposed operations and that reclamation will progress as contemporaneously as practicable with such operations.

(2) Exploration plans shall contain all of the following:

(i) The name, address, and telephone number of the applicant.

(ii) The name, address, and telephone number of the representative of the applicant who will be present during and be responsible for conducting the exploration.

(iii) A narrative description of the proposed exploration area, cross-referenced to the map required under 30 CFR 211.10(a)(2)(viii), including applicable lease or license serial numbers; surface topography; geologic, surface water, and other physical features; vegetative cover; critical habitats of endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places; and known cultural or archeological resources located within the proposed exploration area.

(iv) A narrative description of the methods to be used to conduct coal exploration, reclamation, and abandonment of operations including, but not limited to—

(A) The types and uses of equipment, drilling, and blasting, and road or other access route construction;

(B) Excavated earth-or debris-disposal activities;

(C) The proposed method for plugging drill holes;

(D) Estimated size and depth of drill holes, trenches, and test pits; and,

(E) Plans for transfer and modification of exploration wells for use as surveillance or monitoring wells.

(v) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation.

(vi) The estimated amounts of coal to be removed during exploration, a description of the methods to be used to determine those amounts, and the proposed use of the coal removed.

(vii) A description of the measures to be used during exploration for Federal coal to comply with the performance standards for exploration (30 CFR 211.40(a)) and the applicable requirements of 30 CFR 815.15 or an approved State program.

(viii) A map at a scale of 1:24,000 or larger showing the areas of land to be affected by the proposed exploration and reclamation. The map shall show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; applicable lease boundaries; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth- or debris-disposal areas; existing bodies of surface water; topographic and drainage features; and critical habitats of endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(ix) The name and address of the owner and/or operator/lessee of record of the surface land and any Federal or non-Federal subsurface coal and mineral estate of the area under exploration. If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to that land for the purpose of conducting exploration and reclamation.

(x) Such other data as may be required by the District Mining Supervisor.

(b) *Resource recovery and protection plans.* Before conducting any coal mining operations on Federal leases or licenses, the operator/lessee shall submit and obtain approval of a resource recovery and protection plan, unless a current resource recovery and protection plan has been approved prior to the effective date of these rules. Upon receipt of a resource recovery and protection plan, the District Mining Supervisor will review such plan for completeness and for compliance with

MLA. The resource recovery and protection plan will become a part of the permit application package which will also contain the reclamation plan pursuant to SMCRA. Prior to commencement of any coal mining operations on a Federal lease, a permit application package consisting of a resource recovery and protection plan and a reclamation plan shall be submitted to the regulatory authority. The permit will be issued by the regulatory authority when all parts of the permit application package have been approved. On any lease issued after August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the lease. On any lease issued prior to August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the first lease readjustment after August 4, 1976, unless a current resource recovery and protection plan has been approved previously for the readjusted lease. Any resource recovery and protection plan submitted but not approved as of the effective date of these rules shall be revised to comply with these rules. For the purpose of meeting the 3-year resource recovery and protection plan (30 CFR 211.10(b)) submittal requirement of MLA, the operator/lessee shall submit to the District Mining Supervisor, prior to the deadline for that lease, that information required by the rules of this part and 10 CFR Part 378. A resource recovery and protection plan for an LMU shall be submitted to the District Mining Supervisor as provided in 30 CFR 211.80(e)(1). A resource recovery and protection plan for any LMU must provide for the mining of the LMU coal reserves in a period not to exceed 40 years. The 40-year LMU coal reserves exhaustion period shall begin on the date that coal is produced from that LMU. No resource recovery and protection plan or major modification shall be approved which is not found to achieve MER of the Federal coal reserves. The resource recovery and protection plan shall cover operations to be conducted on leases and/or any lands within an LMU under the rules of this part and 10 CFR Part 378. The resource recovery and protection plan under the rules of this Part shall comply with the requirements of MLA. The District Mining Supervisor may contact directly operator/lessees regarding MLA requirements. The resource recovery and protection plan shall contain all the requirements pursuant to MLA for the life of the mine and, unless previously

submitted in an LMU application, or as directed by the District Mining Supervisor, shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations under the plan to whom notices and orders are to be delivered; names and addresses of operators/lessees; lease serial numbers; license serial numbers, if appropriate; and names and addresses of surface and subsurface coal or other mineral owners of record, if other than the United States.

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted.

(3) A description of the proposed mining operation, including:

(i) Sufficient coal analyses to determine the quality of the coal deposits in terms of Btu content on an as-received basis, ash, moisture, sulphur, volatile matter, and fixed carbon content.

(ii) The methods of mining and/or variation of methods, basic mining equipment and mining factors including, but not limited to, mining sequence, production rate, estimated recovery factors, stripping ratios, highwall limits, and number of acres to be affected.

(iii) A map and an estimate of the coal reserve base, minable reserve base, and recoverable coal reserves for each Federal lease included in the resource recovery and protection plan and the recoverable coal reserves to be mined under the plan. If the resource recovery and protection plan covers an LMU, recoverable coal reserves will also be reported for the non-Federal lands included in the resource recovery and protection plan.

(iv) The method of abandonment of operations proposed to protect the unmined coal reserves and other resources.

(4) Maps and cross sections, as follows:

(i) A plan map of the area to be mined showing the following—

(A) Lease boundaries and numbers;
(B) LMU boundaries, if applicable;
(C) Surface improvements, and surface ownerships and boundaries;
(D) Coal outcrop showing dips and strikes; and,

(E) Locations of existing and abandoned surface and underground mines.

(ii) Isopach maps of each coal bed to be mined and the overburden and interburden.

(iii) Typical structure cross sections showing all technically minable coal beds.

(iv) General layout of proposed surface or strip mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location and width of coal fenders; and,

(C) Cross sections of typical pits showing highwall and spoil configuration, fenders, if any, and coal beds.

(v) General layout of proposed underground mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter by number in 5-year increments for the remainder of mine life;

(B) Location of shafts, slopes, main development entries and barrier pillars, panel development, bleeders, and permanent barrier pillars;

(C) Location of areas where pillars will be left and an explanation why these pillars will not be extracted;

(D) A sketch of a typical entry system for main development and panel development entries showing centerline distances between entries and crosscuts;

(E) A sketch of typical panel recovery (e.g., room and pillar, longwall, or other mining method) showing, by numbering such mining, the sequence of development and retreat; and,

(vi) For auger mining, a plan map showing—

(A) Area to be auger mined and location of pillars to be left to allow access to deeper coal;

(B) A sketch showing details of operations including coal bed thickness, auger hole spacing, diameter of holes and depth or length of auger holes.

(5) A general reclamation schedule for the life of the mine. This should not be construed as meaning duplication of a reclamation plan in a permit application package under SMCRA. The resource recovery and protection plan may cross-reference the reclamation plan requirements under SMCRA to fulfill this requirement.

(6) Any required data which are clearly duplicated in other submittals to the regulatory authority or MSHA may be used to fulfill the requirements of the above paragraphs provided that the cross-reference is clearly stated; a copy of the relevant portion of such submittals must be included in the resource recovery and protection plan.

(7) Explanation of how MER of the Federal coal reserves will be achieved for the Federal coal leases included in

the resource recovery and protection plan. If a coal bed, or portion thereof, is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification.

(c) *Action on plans.*—(1) *Exploration plans.* The District Mining Supervisor after evaluating a proposed exploration plan and all comments received thereon, and after consultation with the authorized officer, and with the regulatory authority when exploration is to be conducted within an approved permit area, shall promptly approve or disapprove in writing an exploration plan. In approving an exploration plan, the District Mining Supervisor shall determine that the exploration plan complies with the rules of this part, applicable requirements of 30 CFR 815.15 or an approved State program, and any lease or license terms and/or conditions. Reclamation must be accomplished as set forth in the exploration plan. The District Mining Supervisor may impose additional conditions to conform to the rules of this part. In disapproving an exploration plan, the District Mining Supervisor shall state what modifications, if any, are necessary to achieve such conformity. No exploration plan shall be approved unless the bond, executed pursuant to the provisions of 43 CFR Subpart 3474 or 43 CFR Part 3410, has been determined to be adequate. When the land involved in the exploration plan is under the surface management jurisdiction of an agency other than DOI, that other agency must concur with the approval terms of the exploration plan.

(2) *Resource recovery and protection plans.* No resource recovery and protection plan or modification thereto shall be approved which is not found to achieve MER of the Federal coal reserves within an LMU or lease issued or readjusted after August 4, 1976. The determination of MER shall be made by the District Mining Supervisor based on review of the resource recovery and protection plan. No resource recovery and protection plan shall be approved prior to the filing of a complete permit application package and unless the lease bond, executed pursuant to the provisions of 43 CFR Subpart 3474 has been determined to be adequate or adjusted in order to be adequate to ensure compliance with the provisions of the resource recovery and protection plan.

(d) *Changes in plans by District Mining Supervisor.* (1) Approved exploration plans may be required to be revised or supplemented at any time by the District Mining Supervisor, after

consultation with the operator/lessee and the authorized officer as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements.

(2) The District Mining Supervisor, pursuant to MLA, may require approved resource recovery and protection plans to be revised or supplemented reasonably for modifications, after consultation with the operator/lessee and the regulatory authority as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements. Such revisions shall be made in writing, as appropriate, and copies submitted to the regulatory authority.

(e) *Changes by the operator/lessee.*

(1) The operator/lessee may propose modifications to an approved exploration plan and shall submit a written statement of the proposed change and its justification to the District Mining Supervisor. The District Mining Supervisor shall promptly approve or disapprove in writing any such modifications, after consultation with the authorized officer and the regulatory authority as necessary, or specify conditions under which they would be acceptable.

(2) The operator/lessee may propose modifications to an approved resource recovery and protection plan for any requirements under MLA, and shall submit a written statement of the proposed change and its justification to the District Mining Supervisor. The District Mining Supervisor shall promptly approve or disapprove in writing any such modifications, after consultation with the regulatory authority as necessary, or specify conditions under which they would be acceptable.

§ 211.12 Mining operations maps.

(a) *General requirements.* The operator/lessee shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the District Mining Supervisor. Before a mine or section of a mine is abandoned, closed, or made inaccessible, a survey of the mine or section shall be made by the operator/lessee and recorded on such maps. All excavations in each separate coal bed shall be shown in such a manner that the production of coal for any royalty reporting period can be accurately ascertained. Additionally, the maps shall show the name of the mine; name of the operator/lessee; lease or license serial number(s); permit number; lease and permit boundary lines; surface buildings; dip of the coal bed(s); true north; map scale; map explanation; location, surface elevation, depth, and

thickness of the coal; total depth of each drill hole; location, diameter, and depth of auger holes; improvements; topography, including subsidence resulting from mining; geologic conditions as determined from outcrops, drill holes, exploration, or mining; any unusual geologic or other occurrences such as dikes, faults, unusual splits, unusual water occurrences, or other conditions that may influence MER; and such other information as the District Mining Supervisor may request.

Copies of such maps shall be properly posted to date and furnished, in duplicate, to the District Mining Supervisor annually, or at such other times as the District Mining Supervisor requests. Any maps, submitted to the regulatory authority, MSHA or other State or Federal Agencies, that show all of the specific data required by this paragraph or 30 CFR 211.12 (b), (c), and (d) shall be acceptable in fulfilling these requirements.

(b) *Underground mine maps.* Underground mine maps, in addition to the general requirements of 30 CFR 211.12(a), shall show all mine workings; the date of extension of the mine workings; an illustrative coal section at the face of each working unit; location of all surface mine fans; position of all fire walls, dams, main pumps, fire pipelines, permanent ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water in other mine workings, either in or above or below the active workings of the mine; areas affected by squeezes; elevations of surface and underground levels of all shafts, slopes, or drifts, and elevation of the floor, bottom of the mine workings, or mine survey stations in roof at regular intervals in main entries, panels, or sections; and sump areas. Any maps submitted to the regulatory authority that show subsidence shall also be submitted to the District Mining Supervisor.

(c) *Surface mine maps.* Surface mine maps, in addition to the general requirements of 30 CFR 211.12 (a), shall include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved resource recovery and protection plan. Such maps shall show areas from which coal has been removed; the highwall; uncovered, but unmined, coal beds; and elevation of the top of the coal beds.

(d) *Vertical projections and cross sections of mine workings.* When

required by the District Mining Supervisor, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet standards acceptable to the District Mining Supervisor and shall be certified by a professional engineer, professional land surveyor, or other such professionally qualified person.

(f) *Liability of operator/lessee for expense of survey.* If the operator/lessee fails to furnish a required or requested map within a reasonable time, the District Mining Supervisor, if necessary, shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator/lessee.

(g) *Incorrect maps.* If any map submitted by an operator/lessee is believed to be incorrect, and the operator/lessee cannot verify the map or supply a corrected map, the District Mining Supervisor may employ a professionally qualified person to make a survey and any necessary maps.

If the survey shows the maps submitted by the operator/lessee to be incorrect substantially, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator/lessee.

Performance Standards

§ 211.40 Exploration, surface mining, and underground mining standards.

The following performance standards shall apply to exploration, development, production, resource recovery and protection, MER, and preparation and handling of coal under Federal leases and licenses, and LMU's.

(a) *Performance standards for exploration.* (1) The operator/lessee shall comply with the standards of the rules of this part and with all applicable requirements of 30 CFR Part 815 or an approved State program.

(2) The operator/lessee, as required by the District Mining Supervisor, shall set and cement casing in the hole and install suitable blowout prevention equipment when drilling on lands valuable or prospectively valuable for oil and gas or geothermal resources.

(3) Exploration drill holes will be conditioned as follows: All exploration drill holes must be plugged and capped with at least 5 feet of cement or other permanent plugging material that is unaffected by water and hydrocarbon gases and will prevent the migration of gases and water in the drill hole under normal hole pressures or, exploration

drill holes shall be managed to prevent water pollutions and mixing of ground and surface waters and ensure the safety of people, livestock, and wildlife. For exploration holes drilled deeper than stripping limits, the operator/lessee, using cement or other suitable plugging material approved by the District Mining Supervisor, shall plug the hole through the thickness of the coal bed(s) or mineral deposit(s) and through aquifers for a distance of at least 50 feet above and below the coal bed(s) or mineral deposit(s) and above and below aquifers or to the bottom of the drill hole, unless a lesser plug is justified by the operator/lessee in the approved exploration plan or otherwise specified in writing by the District Mining Supervisor.

(4) The operator/lessee shall retain for 1 year, unless a shorter time period is authorized by the District Mining Supervisor, all drill and geophysical logs and representative samples of all drill cores, and shall make such drill and geophysical logs and cores available for inspection or analysis by the District Mining Supervisor, if requested. Confidentiality of such information will be accorded pursuant to the provisions of 30 CFR 211.6.

(5) The operator/lessee may utilize exploration drill holes as surveillance wells for the purpose of monitoring the effects of subsequent operations on the quantity, quality, or pressure of ground water or mine gases only with the written approval of the District Mining Supervisor, in consultation with the regulatory authority. The operator/lessee may utilize exploration drill holes as water wells only after approval of the operator/lessee's written request by the District Mining Supervisor and the surface owner or authorized officer, in consultation with the regulatory authority. All such approvals shall be accompanied by a corresponding transfer of responsibility for any liability for damage and eventual plugging. Nothing in this paragraph shall supersede or affect the applicability of any state law requirements for such a transfer, conversion, or utilization as a supply for domestic consumption.

(b) *General performance standards for surface and underground mining.*—

(1) *Maximum economic recovery (MER).* Upon approval of a resource recovery and protection plan for an LMU or lease issued or readjusted after August 4, 1976, the operator/lessee shall conduct operations to achieve MER of the Federal coal reserves. To determine that MER of the Federal coal reserves will be achieved, the District Mining Supervisor shall consider the information submitted by the operator/lessee under 30 CFR 211.10(b) and/or 211.80(c). The District

Mining Supervisor may request additional information from the operator/lessee to aid in the MER determination. The operator/lessee shall consider coal preparation operations to avoid the wasting of coal and to encourage the achievement of MER. Leases issued prior to August 4, 1976, that have not yet been readjusted after August 4, 1976, shall comply with MLA regarding resource recovery and protection and conservation of the coal reserves and other resources.

(2) *Diligent development and continued operation.* Each lease is subject to the conditions of diligent development and continued operation. The operator/lessee is required to meet the diligent development, continued operation and advance royalty requirements of 10 CFR Part 378. Diligent development and continued operation requirements for LMU's are also found at 10 CFR Part 378.

(3) *Extensions of diligent development.* Extensions of diligent development are provided for in 10 CFR Part 378. Applications for such an extension shall be filed with the District Mining Supervisor.

(4) *Continued operation and advance royalty.* After meeting diligent development, operators/lessees must comply with the continued operation and advance royalty provisions of 10 CFR Part 378.

(i) If an operator/lessee fails to meet continued operation or fails to make the approved advance royalty payments in any continued operation year, the District Mining Supervisor shall inform the operator/lessee in writing that the operator/lessee is in violation of the continued operation requirement.

(ii) For advance royalty purposes, the value of the coal will be calculated in accordance with 30 CFR 211.63 and 10 CFR Part 378.

(iii) The District Mining Supervisor may, upon notifying the operator/lessee 6 months in advance, cease to accept advance royalty in lieu of continued operation for the next continued operation year.

(iv) Continued operation and advance royalty requirements for LMU's are found at 30 CFR 211.80(h).

(5) *Recoverable coal waste.* The operator/lessee shall store waste, containing coal in such quantity that it may be separated later by washing or other means, in a manner approved by the District Mining Supervisor.

(6) *Unexpected wells.* The operator/lessee shall notify the District Mining Supervisor promptly if operations reveal unexpected wells or drill holes which could adversely affect the recovery of

coal during mining operations, and shall take no further action that would disturb such wells or drill holes without the approval of the District Mining Supervisor.

(7) *Resource recovery and protection.* The operator/lessee shall conduct efficient operations to recover the coal reserves; prevent wasting and conserve the coal reserves and other resources; prevent damage or degradation to coal-bearing or mineral-bearing formations; and ensure that other resources are protected upon abandonment.

(8) *Release of lease bond.* Subsequent to permanent abandonment of mining operations, the District Mining Supervisor will determine if the operator/lessee has met obligations required under the lease bond for resource recovery and protection, and rentals and royalties on producing leases. The District Mining Supervisor will make appropriate recommendations to the authorized officer for reduction or termination of the lease bond.

(9) *Preparation plants.* The operator/lessee shall consider coal preparation operations to avoid wasting coal and to encourage achieving of MER.

(c) *Performance standards for underground mines.*—(1) *Underground resource recovery.* Underground mining operations shall be conducted so as to prevent wasting of coal and to conserve coal reserves consistent with the protection and use of other resources. No entry, room, or panel workings in which the pillars have not been completely extracted within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the District Mining Supervisor.

(2) *Subsidence.* The operator/lessee shall adopt mining methods which ensure proper recovery of coal reserves under MLA, as determined by the District Mining Supervisor. Each operator/lessee of an underground coal mine shall adopt measures consistent with known technology in order to prevent or, where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence, maximize mine stability, and maintain the value and use of surface lands consistent with 30 CFR 817.121, 817.122, 817.124, 817.126, or applicable requirements of an approved State program. Where pillars are not removed and controlled subsidence is not part of the resource recovery and protection plan, pillars of adequate dimensions shall be left for surface stability, giving due consideration to the thickness and strength of the coal beds and the strata above and immediately below the coal beds.

(3) *Top coal.* Top coal may be used for primary roof support in underground mines only upon approval by the District Mining Supervisor. The determination of mining height in thick coal beds will take into consideration safety factors, available equipment, overall coal bed thickness, and MER. The bottom coal left, if determined by the District Mining Supervisor to be of a minable thickness, should be maintained at a uniform thickness to allow recovery in the future as new technology is developed and economics allow.

(4) *Multiple coal bed mining.* (i) *Sequence of mining.* In general, the recoverable coal reserves in the upper coal beds shall be worked out before the lower coal beds are mined; simultaneous workings in each upper coal bed shall be kept in advance of the workings in each lower coal bed. The District Mining Supervisor may authorize mining of any lower coal beds before mining the upper coal bed(s) only after a technical justification, submitted to the District Mining Supervisor by the operator/lessee, shows that recovery of all coal bed(s) will not be adversely affected.

(ii) *Protective barrier pillars in multiple coal bed mining.* In areas subject to multiple coal bed extraction, the protective barrier pillars for all main and secondary development entries, main haulageways, primary aircourses, bleeder entries, and manways in each coal bed shall be superimposed regardless of vertical separation or rock competency; however, modifications and exceptions to, or variations from, this requirement may be approved in advance by the District Mining Supervisor.

(5) *Barrier pillars left for support.* (i) The operator/lessee shall not, without prior consent of the District Mining Supervisor, mine any coal or drive any underground workings within 50 feet of any of the outside boundary lines of the leased land, or within such greater distance of said boundary lines as the District Mining Supervisor may prescribe with consideration for State or Federal environmental or safety laws. The operator/lessee may be required to pay for unauthorized mining of barrier pillars. The District Mining Supervisor may require that payment shall be up to, and include, the full value of the coal mined from the pillars. The drilling of any lateral holes within 50 feet of any outside boundary shall be done in consultation with the District Mining Supervisor.

(ii) If the coal in adjoining premises has been worked out, an agreement shall be made with the coal owner prior to the extraction of the coal remaining in

the Federal barrier pillars which otherwise may be lost. If the water level beyond the pillar is below the operator/lessee's adjacent operations, and all safety factors have been considered, the operator/lessee, on the written order of the District Mining Supervisor, shall mine out and remove all available Federal coal in such barrier, if it can be mined without undue hardship to the operator/lessee, with due consideration for safety, and pursuant to existing surface mining, reclamation, and environmental rules. Either the operator/lessee or the District Mining Supervisor may initiate the proposal to mine out such coal in a barrier pillar.

(6) The abandonment of a mining area due to thinning of coal beds or reduction in the quality of the coal shall require the approval of the District Mining Supervisor.

(d) *Performance standards for surface mines.* (1) Pit widths for each coal bed shall be engineered and designed so as to eliminate or minimize the amount of coal fender to be left as a permanent pillar on the spoil side of the pit.

(2) The amount of bottom or rider coal beds wasted in each pit will be minimized consistent with individual mine economics and the coal quality standards that must be maintained by the operation.

(3) The abandonment of a mining area due to thinning of coal beds or reduction in the quality of the coal shall require the approval of the District Mining Supervisor.

(4) If a coal bed exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited, the operator/lessee shall immediately take all necessary steps to extinguish the fire and protect the remaining coal.

(5) The District Mining Supervisor shall approve the conditions under which a surface mine will be temporarily abandoned, pursuant to the requirements of development, production, resource recovery and protection, and rentals and royalties on producing leases.

(6) *Barrier or boundary coal.* The operator/lessee shall be encouraged by the District Mining Supervisor, in the interest of conservation of coal reserves and other resources, to mine coal up to the lease boundary line; provided that, the mining does not violate State or Federal laws, the mining is in compliance with existing State and Federal mining, environmental and reclamation laws and rules, the mining does not conflict with existing surface rights, and the mining is carried out without undue hardship to the operator/

lessee and with due consideration for safety.

(e) *Performance standards for auger mines.* (1) If auger mining is proposed, the District Mining Supervisor shall take into account the percentage of recovery, which in general shall exceed 30 percent, and the probable effect on recovering the remaining adjacent coal reserves by underground mining. If underground mining from the highwall or outcrop is contemplated in the foreseeable future, auger mining may not be approved if underground mining would ensure greater recovery of the unmined coal reserves. Where auger mining is authorized, the District Mining Supervisor will require a sufficient number of pillars at regular intervals along the highwall or outcrop to ensure access to the unmined coal reserves. The size of pillars to be left will be determined by the District Mining Supervisor and shall be of sufficient size to accommodate the necessary underground development entries with barrier pillars sufficient to protect the development entries.

(2) A plan for recovery of coal reserves by auger methods shall be designed to achieve MER, where applicable.

(3) Auger mining must comply with the rules of this part, and 30 CFR Chapter VII or applicable requirements of an approved State program.

§ 211.41 Completion of operations and abandonment.

(a) Before permanent abandonment of exploration operations, all openings and excavations shall be closed, backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved exploration plan. Drill holes, trenches, and other excavations for exploration shall be abandoned in such a manner as to protect the surface and not endanger any present or future underground operation, or any deposit of coal, oil, gas, mineral resources, or ground water. Areas disturbed by exploration operations will be graded, drained, and revegetated.

(b) Upon permanent abandonment of mining operations, the District Mining Supervisor will require that the unmined coal reserves and other resources be adequately protected. Upon completion of abandonment, the District Mining Supervisor will inform the authorized officer and regulatory authority.

Reports, Royalties, Audits, and Records

§ 211.62 Reports.

(a) *Exploration reports.* The operator/lessee shall file with the District Mining Supervisor the information required in

30 CFR 211.62(b). Such filing shall be within 30 days after the end of each calendar year, and, in addition:

(1) Promptly upon a request by the District Mining Supervisor.

(2) Promptly upon completion or suspension of exploration operations.

(3) As provided in the exploration license or lease.

(b) *Exploration report content.* The exploration report shall contain the following information:

(1) Identity and location of the leased or licensed lands.

(2) Nature of exploration operations.

(3) Number of completed holes drilled and/or other work performed during the year or report period.

(4) Total footage drilled during the year or other period as determined by the District Mining Supervisor.

(5) Map showing all drill holes, other excavation locations and the coal crop lines.

(6) Analyses of coal and other pertinent tests obtained from exploration operations during the year.

(7) Signed copies of records and geologic interpretation of all exploration operations performed on the leased or licensed lands. Any coal reserves and coal reserve base estimates generated from an exploration license shall be submitted to the District Mining Supervisor within 1 year after completion of drilling operations.

(8) Copies of all in-hole mechanical or geophysical stratigraphic surveys or logs, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs produced during the year. The records shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions.

(9) Status of reclamation of the disturbed areas.

(10) A statement on availability and location of the representative samples of all drill holes and cores retained by the operator-lessee pursuant to 30 CFR 211.40(a).

(11) Any other information requested by the District Mining Supervisor.

(c) *Production reports and payments.*

(1) Operators/lessees shall report on USGS Form 9-373a, within 30 days after expiration of the period covered by the report, all coal mined, the basis for computing royalty and any other form requirements, other and shall make all payments due. Acceptance of the report and payment shall not be construed as an accord and satisfaction on the operator/lessees' royalty obligation.

(2) Licensees shall report all coal mined on a semiannual basis on the report form provided.

(3) LMU production shall be reported in accordance with 30 CFR 211.80(h)(4).

(d) *Penalty.* If an operator/lessee records or reports less than the true weight or value of coal mined, the District Mining Supervisor shall impose a penalty equal to either double the amount of royalty due on the shortage or the full value, as determined in 30 CFR 211.63, of the shortage. If, after notice, an operator/lessee or licensee maintains false records or files false reports, the District Mining Supervisor may recommend to the authorized officer that action be initiated to cancel the lease or license, in addition to the imposition of any penalties.

(e) *Confidentiality.* Confidentiality of any information required under this section shall be determined in accordance with 30 CFR 211.6.

§ 211.63 Royalties.

(a) Advance royalty provisions are contained at 30 CFR 211.40(b)(4) and 10 CFR Part 378 for leases and 30 CFR 211.80(h)(7) and 10 CFR Part 378 for LMU's.

(b) An overriding royalty interest, production payment, net profit share or similar interest that exceeds 50 percent of the rate of royalty first payable to the United States under the lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a lease transfer. When an interest in the lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows to the satisfaction of the authorized officer that he has made substantial investments for improvements on the land covered by the transfer that would justify a higher payment.

(c) (1) In order to encourage the greatest ultimate recovery of coal reserves, and in the interest of conservation of coal reserves and other resources, the District Mining Supervisor, in determining if it is necessary to promote development, finds that the lease cannot be successfully operated under its terms, the District Mining Supervisor may waive, suspend, or reduce the rental on a lease, or reduce the royalty but not advance royalty, on a lease or portion thereof. In no case may the District Mining Supervisor reduce to zero any royalty on a producing lease.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the District Mining Supervisor. The application shall contain the serial number of the lease.

the BLM State Office, the name of the record title holder and any operator/lessee, and the description of the lands in the manner provided by 43 CFR 3471.1.

(i) Each application shall include the name and location of the mine; a map showing the extent of the existing, proposed or adjoining mining operations; a tabulated statement of the coal mined, if any, and subject to Federal royalty for the existing or adjoining operation covering a period of not less than 12 months before the date of filing of the application; and the average production and existing rental and royalty rates on producing leases.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire mine, the income from the sale of coal, and all facts indicating whether the mine, can be successfully operated under the rental and royalty on producing leases fixed in the lease or why the reduction is necessary to promote development. Where the application is for a reduction in royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any. If the lease included in the application is not part of nor adjoining an operating mine, this detailed financial data may be obtained from another operating mine which is both in close proximity and has similar operating characteristics.

(iii) The applicant shall also file a copy of agreements between the operator/lessee and the holders of any royalty interests to a reduction of all other royalties from the lease so that the total royalties owed the holders of royalty interest will not be in excess of one-half of the Government royalties, should the royalty reduction be granted.

(3) If the applicant does not meet the criteria of the rules of this Part, the District Mining Supervisor shall reject such application or request more data from the operator/lessee.

(4) If the applicant meets the criteria of the rules of this Part, the District Mining Supervisor shall act on the application.

(d) Operators/lessees shall submit, unless otherwise provided for in the lease, royalty payments on a monthly basis. The payment shall be made within 30 days after the end of the calendar month for which the royalty accrued.

(e) Where royalty is calculated on a per ton basis, it shall be based on the actual weight of coal and shall accrue on the sale or use of coal. In addition, where coal placed in inventory exceeds

that which the District Mining Supervisor determines to be required for normal mining and processing operations the royalty shall also be paid on that estimated tonnage in inventory.

(f) Where royalty is calculated on a percentage basis, the value of coal for royalty purposes shall be presumed to be the gross value at the point of sale, normally the mine. For captive operations or other than arms-length transactions, the District Mining Supervisor will determine gross value and the point for gross value determination.

(g) The gross value shall be the unit sale or contract price times the number of units sold, unless the District Mining Supervisor determines that:

(1) A contract of sale or other business arrangement between the operator/lessee and a purchaser of some or all of the coal produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal; or

(2) No consideration is received from some or all of such coal because the operator/lessee is consuming such coal or adding it to inventories, and for which royalty is due and payable.

In either case, the District Mining Supervisor shall determine the gross value of such coal taking into account:

(i) Any consideration received or paid by the operator/lessee in other related transactions.

(ii) The average price paid for coal of like quality produced from the same general area during the lease month.

(iii) Contracts or other business arrangements, between coal producers and purchasers for the sale of coal other than coal produced under such lease, which are comparable in terms, volume, time of execution, area of supply, and other circumstances.

(iv) Mining cost plus reasonable profit margin.

(v) Such other relevant factors as the District Mining Supervisor may deem appropriate.

(h) If additional processing of the coal is performed prior to sale, such as washing to remove waste, bone, or other impurities, the processing costs exceeding the cost of primary and secondary crushing, storing, and loading may be deducted from the gross value in determining value for royalty purposes. The District Mining Supervisor will allow such deductions only when, in his judgment and subject to his audit, the operator/lessee provides an accurate account of the costs incurred.

(i) If a Federal coal lease is developed by *in situ* technology, the gross value of production, for the purpose of computing royalty, shall be determined by the Conservation Division, USGS.

(j) If a coal lease that provides for a cents-per-ton royalty is developed by *in situ* technology, Conservation Division, USGS, will establish a procedure for estimating tonnage for royalty purposes.

(k) In the event waste piles or slurry ponds are reworked to recover coal, or if a market becomes available to sell the waste products containing coal, the operator/lessee shall pay royalty at a rate specified in the lease at the time of recovery. The operator/lessee shall make payment based on the Federal share of the coal when the coal is recovered regardless of whether it is stored on Federal lands. Where such waste containing coal from a Federal lease is mixed with similar waste from private lands, the operator/lessee shall maintain adequate records from which Federal ownership of coal in the waste may be determined. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

(l) Application by an operator/lessee for relief from any operations and production requirements of a lease shall be filed in triplicate in the office of the District Mining Supervisor. The District Mining Supervisor is authorized to act on applications for suspension of operations or production, or both, filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

(m) The term of any lease shall be extended by adding thereto any period of suspension of all operations and production during such term, in accordance with any direction or assent of the District Mining Supervisor.

(n) A suspension shall take effect as of the time specified in the direction or assent of the District Mining Supervisor. Rental and minimum royalty payments will be suspended during such period of suspension of all operations and production, beginning with the first day of the lease month on which the suspension of operations and production becomes effective. If the suspension of operations and production becomes effective on any date other than the first day of the lease month, rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty on producing leases due under the lease.

(o) The minimum annual production requirements shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the District Mining Supervisor in the interest of conservation of coal reserves and other resources.

(p) A suspension under this section affects only the operations and production requirements of the lease; it does not suspend the permit and the operator/lessee's reclamation obligations under it.

§ 211.65 Audits.

An audit of the accounts and books of operators/lessees for the purpose of determining compliance with lease terms relating to royalties may be required annually or at other times as directed by the District Mining Supervisor. The audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or the District of Columbia, and at the expense of the operator/lessee. The operator/lessee shall furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance to the District Mining Supervisor within 30 days after the completion of each audit. Where such audits are required, the District Mining Supervisor will specify the purpose and scope of the audit and the information which is to be verified or obtained.

§ 211.66 Maintenance of and access to records.

(a) Operators/lessees shall maintain current and accurate records for the lease or LMU showing:

(1) The type and quality or grade and weight of all coal mined, sold, used on the premises, or otherwise disposed of, and all coal in storage (remaining in inventory).

(2) The prices received for all coal sold and to whom and when sold.

(b) The District Mining Supervisor shall have access to all records of the operator/lessee pertaining to compliance with lease terms relating to royalties, including, but not limited to:

(1) Quantities mined, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

(c) Licensees must maintain a current record of all coal mined and/or removed.

(d) Operators/lessees will retain these records for a period of time as determined by the District Mining Supervisor in accordance with current USGS rules and procedures.

§ 211.67 Late payment or underpayment charges.

The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these rules will result in the collection of the amount due and in the assessment and collection of a late payment charge. The late payment charges assessed will be computed on the basis of the amount past due for each 30-day period or portion thereof that the payment or underpayment is late. In the absence of a specific lease or contract provision prescribing a different rate, the percentage assessment rate to be applied in these instances will be the rate calculated by the U.S. Department of the Treasury as the current value of funds to the Treasury based on a recent 3-month period. This rate will be prescribed in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue or underpayments which occur during the succeeding calendar quarter. Underpayments and payments which are received after the due date will be applied to the appropriate current charges for rentals; production or advance royalty; assessments for liquidated damages; or to such other payments, fees, or assessments that an operator/lessee is required to submit by a specified date. The failure to remit past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings.

Inspection, Issuance of Orders, Enforcement, and Appeals

§ 211.70 Inspections.

(a) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor for inspection or investigation of operations in order to determine whether they are in compliance with all applicable laws, rules, and orders; the terms and conditions of the lease or license; and requirements of any approved exploration plan for:

- (1) Abandonment.
 - (2) Environmental protection and reclamation practices.
- (b) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor for inspection or

investigation of operations in order to determine whether they are in compliance with all applicable laws, rules, and orders; the terms and conditions of the lease or license; and requirements of any approved resource recovery and protection plan for:

- (1) Production practices.
- (2) Development.
- (3) Resource recovery and protection.
- (4) Diligent development and continued operation.
- (5) Audits of rental and royalty payments on producing leases.
- (6) Abandonment.
- (7) MER determinations.

§ 211.71 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator/lessee shall inform the District Mining Supervisor in writing of the operator/lessee's temporary and permanent post office address and the name and post office address of the superintendent or designated agent who will be in charge of the operations and who will act as the local representative of the operator/lessee. Thereafter, the District Mining Supervisor shall be informed of any change of address.

(b) *Receipt of notices and orders.* The operator/lessee shall be construed to have received all notices and orders that are mailed to the mine office or handed to the superintendent, mine foreman, mine clerk, or higher officials connected with the mine or exploration site for transmittal to the operator/lessee or his local representative.

§ 211.72 Enforcement.

(a) If the District Mining Supervisor determines that an operator/lessee has failed to comply with the rules of this part or 10 CFR Part 378, the terms and conditions of the lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits or other resources, or compromise the royalty provisions of the rules of this part, the District Mining Supervisor shall serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified or registered mail addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the District Mining Supervisor shall be grounds for

cessation of operations upon notice by the District Mining Supervisor. The District Mining Supervisor may also recommend to the authorized officer the initiation of action for cancellation of the lease or license and forfeiture of any lease bonds.

(b) The notice of noncompliance shall specify in what respect(s) the operator/lessee has failed to comply with the rules of this part or 10 CFR Part 378, the terms and conditions of the lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and shall specify the action that must be taken to correct such noncompliance and the time limits within which such action must be taken. A written report shall be submitted by the operator/lessee to the District Mining Supervisor when such noncompliance has been corrected.

(c) If, in the judgment of the District Mining Supervisor, an operator/lessee is conducting activities which fail to comply with the rules of this part or 10 CFR Part 378, the terms and conditions of the lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and/or which threaten immediate and serious damage to the mine, the deposit being mined or valuable ore-bearing mineral deposits, or, regarding exploration, serious environmental or reclamation damage, the District Mining Supervisor shall order the immediate cessation of such activities without prior notice of noncompliance.

(d) The District Mining Supervisor shall enforce requirements of SMCRA only if he finds a violation, condition, or practice regarding emergency situations for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 843.12.

(e) The District Mining Supervisor is responsible for enforcing the 10 CFR Part 378 rules promulgated by DOE under the DOE Organization Act (42 U.S.C. 7152 and 7153).

§ 211.73 Appeals.

Decisions or orders issued by the District Mining Supervisor under 30 CFR Part 211 may be appealed pursuant to 30 CFR Part 290, except that decisions or orders issued by the District Mining Supervisor under 30 CFR 211.72(d) may be appealed pursuant to 43 CFR Part 4.

Logical Mining Units

§ 211.80 Logical mining units.

(a) *General.* An LMU shall become effective only upon approval by the District Mining Supervisor. An LMU

may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. Any LMU may be diminished by creation of other separate leases or LMU's.

(b) An LMU which contains no Federal coal leases issued before August 4, 1976, may be established at the initiative of the operator/lessee or by order of the District Mining Supervisor. The District Mining Supervisor may direct the establishment of an LMU containing Federal coal leases issued before August 4, 1976, provided that the operators/lessees consent to making all such leases within the LMU subject to the uniform requirements for submittal of resource recovery and protection plans, LMU coal reserves exhaustion, diligent development, continued operation, MER, advance royalty, and royalty periods (but not royalty rates) made applicable by the LMU stipulations and the rules of this part and 10 CFR Part 378. Any lease included in an LMU shall have its terms amended as necessary so that its terms and conditions are consistent with the stipulations required for the approval of the LMU pursuant to 30 CFR 211.80(e).

(c) *Contents of an LMU application.* An operator/lessee must submit five copies of an LMU application to the District Mining Supervisor if the operator/lessee is applying on his own initiative to combine lands into an LMU, or if directed to establish an LMU by the District Mining Supervisor, in accordance with 30 CFR 211.80(b). Such application shall include the following unless previously submitted in a current, approved resource recovery and protection plan.

(1) Name and address of the designated operator/lessee of the proposed LMU.

(2) Lease serial numbers and description of the land and all coal beds considered to be of minable thickness within the boundary of the proposed LMU. Identification of those coal beds proposed to be excluded from any Federal lease which would be a part of the proposed LMU.

(3) Evidence of ownership or effective control of all the surface and all coal to be mined in the proposed LMU.

(4) Elements required under 30 CFR 211.10(b) for both Federal and private lands to be included in an LMU.

(5) Explanation of how MER of the Federal coal reserves will be achieved by establishment of the proposed LMU. If a coal bed, or portion thereof, is proposed to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification.

(6) Any other information required by the District Mining Supervisor.

(7) If any confidential information is included in the submittal and is identified as such by the operator/lessee, it shall be treated in accordance with 30 CFR 211.6.

(d) *Consultation.* (1) Prior to approval, the District Mining Supervisor shall consult with the applicant about any Federal coal reserves within the proposed LMU that the applicant does not intend to mine and any Federal coal reserves that the applicant intends to relinquish. The District Mining Supervisor shall also consult with the applicant about proposed lease revisions to make the time periods for resource recovery and protection plan submittals, the 40-year LMU coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and rental and royalty collection requirements applicable to each producing lease consistent with the proposed LMU stipulations.

(2) The public participation procedures of 30 CFR 211.5 shall be completed prior to approval of an LMU.

(e) *Stipulations.* Prior to the approval of a proposed LMU, the District Mining Supervisor shall notify the applicant and authorized officer of stipulations required for the approval of the proposed LMU. The proposed LMU stipulations shall provide:

(1) A schedule for the submittal of a resource recovery and protection plan for the entire proposed LMU, derived from the resource recovery and protection plan submittal requirements for each lease in the proposed LMU.

(2) A schedule for the achievement of diligent development and continued operation for the proposed LMU. The schedule shall reflect the date for achieving diligent development and maintaining continued operation of the individual leases included in the proposed LMU, consistent with 10 CFR Part 378.

(3) Uniform Federal reporting periods for rental and royalty on producing leases.

(4) The revision, if necessary, of terms and conditions of the individual Federal leases included in the proposed LMU. The terms and conditions of the Federal leases, except for royalty rates, shall be amended so that they are consistent with the stipulations of the approved LMU.

(5) An estimate of the LMU coal reserves, including Federal lease coal reserves and non-Federal coal reserves, using data acquired by generally acceptable exploration methods.

(6) A stipulation that the 40-year LMU coal reserves exhaustion requirement

will begin the date that coal is first produced from the approved LMU, as determined during the first royalty reporting period following such date.

(7) The advance royalty rate shall be as established by 10 CFR Part 378.

(8) Any other condition that the District Mining Supervisor determines to be necessary for the efficient and orderly operation of the proposed LMU.

(f) *Criteria for approving the establishment of an LMU.* The District Mining Supervisor shall, except for good cause stated in a decision disapproving the application, approve a proposed LMU if it meets the following criteria:

(1) The proposed LMU fully meets the LMU definition.

(2) Mining operations on the proposed LMU will achieve MER of Federal coal reserves within the proposed LMU.

(3) All single leases that are included in more than one proposed LMU shall be segregated into two or more leases. If only a portion of a lease is included in a proposed LMU, the remaining land shall be segregated into another lease. The District Mining Supervisor will consult with the authorized officer about the segregation of such leases. The operator/lessee may apply to relinquish any such portion of a lease under 43 CFR 3452.1.

(4) The applicant has agreed to the proposed LMU stipulations required by the District Mining Supervisor for approval of the proposed LMU.

(g) *Modification of an approved LMU.* If an approved LMU is enlarged or

diminished in accordance with 30 CFR 211.80(a), the estimate of LMU coal reserves will be adjusted accordingly. In considering an application for enlargement of an existing LMU, the District Mining Supervisor shall consider modifying the existing LMU stipulations.

(h) *Administration of LMU operations.* An LMU shall be administered in accordance with the following criteria:

(1) The 40-year LMU coal reserves exhaustion requirement will begin the date that coal is first produced from the approved LMU, as determined during the first royalty reporting period following such date. Any resource recovery and protection plan submitted after approval of the LMU will cover all Federal and non-Federal lands within the LMU and contain the information required by 30 CFR 211.10(b).

(2) Where production from non-Federal lands is the basis, in whole or in part, for satisfaction of the requirements that the operator/lessee achieve diligent development or maintain continued operation, the operator/lessee shall provide a certified report of such production, as determined by the District Mining Supervisor. The certified report shall include a map showing the area mined and the amount of coal mined.

(3) *Extensions of diligent development for LMU's.* Extensions of diligent development are provided for in 10 CFR Part 378. Applications for such an

extension shall be filed with the District Mining Supervisor.

(4) *Continued operation and advance royalty.* After meeting diligent development, operators/lessees must comply with continued operation requirements of 10 CFR Part 378.

(i) If an operator/lessee fails to meet continued operation or fails to make the approved advance royalty payments in any continued operation year, the District Mining Supervisor shall inform the operator/lessee in writing that the operator/lessee is in violation of the continued operation requirement.

(ii) For advance royalty purposes, the value of the coal will be calculated in accordance with 30 CFR 211.63.

(iii) The boundaries of an LMU may be modified later either upon application by the operator/lessee and approval of the District Mining Supervisor after consultation with the authorized officer, or by direction of the District Mining Supervisor after consultation with the authorized officer. The District Mining Supervisor may adjust only the estimate of LMU coal reserves in accordance with departmental actions or orders that modify the LMU boundaries or upon application by the operator/lessee under 43 CFR 3452.1 (see also 30 CFR 211.80(g)).

Dated: November 19, 1981.

James G. Watt,

Secretary of the Interior.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFF NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Deadlines for Comments on Proposed Rules for the Week of December 20 through December 26, 1981

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

- 57098 11-20-81 / Taking of small numbers of non-depleted marine mammals; comments by 12-21-81

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

- 57696 11-25-81 / Inclusion of construction work in progress for public utilities; extension of time for reply comments; comments by 12-23-81

ENVIRONMENTAL PROTECTION AGENCY

- 57284 11-23-81 / Hazardous waste; treatment, storage, and disposal facilities, standards for owners and operators; seismic location standard compliance, political jurisdictions list; interim rule; comments by 12-23-81
- 57498 11-24-81 / 2-[M-Chlorophenoxy] propionic acid; Tolerances and exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities; comments by 12-24-81
- 57061 11-20-81 / Minnesota; approval and promulgation of implementation plans; comments by 12-21-81
- 57572 11-24-81 / North Carolina: PSD and NSR regulations; Approval and promulgation of implementation plans; comments by 12-24-81
- 55994 11-13-81 / Texas Hazardous Waste Management Program; application for interim authorization, phase II, Components A and B; comments by 12-21-81

FEDERAL COMMUNICATIONS COMMISSION

- 54787 11-4-81 / Amendment to eliminate the requirement that licensees retain letters received from the public; reply comments by 12-22-81

- 50570 10-14-81 / FM broadcast station; proposed changes in table of assignments; Lufkin, Tex.; reply comments by 12-24-81
- 50569 10-14-81 / FM broadcast station; proposed changes in table of assignments; Wishek, N.D.; reply comments by 12-24-81
- 53469 10-29-81 / FM broadcast stations in Belleville, Kansas, Hastings and Holdrege, Nebraska; proposed changes in table of assignments; reply comments by 12-21-81
- 53471 10-29-81 / FM broadcast stations in Montevideo, Olivia, and Ortonville, Minn.; proposed changes in table of assignments; comments by 12-21-81
- 57078 11-20-81 / Subscription television service; comments by 12-21-81
- 50571 10-14-81 / TV broadcast station; proposed changes in table of assignments; Bozeman, Mont.; reply comments by 12-24-81
- FEDERAL LABOR RELATIONS AUTHORITY**
- 57056 11-20-81 / Processing of cases; comments by 12-21-81
- HEALTH AND HUMAN SERVICES DEPARTMENT**
- Food and Drug Administration—
- 57475 11-24-81 / *Alpha*-hydro-*omega*-hydroxy-poly (oxyethylene)/poly (oxypropylene) (Minimum 15 moles)/poly (oxyethylene) block Copolymer, food additive; objections by 12-24-81
- 57474 11-24-81 / Canned pineapple; amendment of standards of identify and quality; objections by 12-24-81
- 51923 10-23-81 / Canned tropical fruit salad; possible establishment of a standard; comments by 12-22-81 [Corrected at 46 FR 55994, 11-13-81]
- 57034 11-20-81 / Indirect food additives, adjuvants, production aids, and sanitizers, antioxidants and/or stabilizers for polymers; comments by 12-21-81
- 57033 11-20-81 / Indirect food additives, polymers bis(isocyanatomethyl) benzene and bis(isocyanatomethyl) cyclohexane; comments by 12-21-81
- 57476 11-24-81 / Methylated poly(*N*-1,2-Dihydroxyethylene-1,3-Imidazolidin-2-one), indirect food additives; objections by 12-24-81

- 51926 10-23-81 / Quick frozen blueberries; possible establishment of a standard; comments by 12-22-81
[Corrected at 46 FR 55994; 11-13-81]
- 51402 10-20-81 / Quick frozen leeks; possible establishment of a standard; comments by 12-21-81
- 57032 11-20-81 / Secondary direct food additives permitted in food for human consumption, epichlorohydrin-ammonia crosslinked copolymer, quaternized with methyl chloride; comments by 12-21-81
Office of the Secretary—
- 51410 10-20-81 / Indian preference in employment, training, and subcontracting opportunities; comments by 12-21-81
Social Security Administration—
- 51778 10-22-81 / Supplemental Security Income; disposing of resources at less than fair market value; comments by 12-21-81
INTERIOR DEPARTMENT
National Park Service—
- 51558 10-20-81 / World Heritage Convention; comments by 12-21-81
Surface Mining Reclamation and Enforcement Office—
- 57327 11-23-81 / Abandoned mine land reclamation program; comments by 12-23-81
JUSTICE DEPARTMENT
Drug Enforcement Administration—
- 51603 10-21-81 / Excluded nonnarcotic substances; comments by 12-21-81
LABOR DEPARTMENT
Occupational Safety and Health Administration—
- 57060 11-20-81 / Supplement to California State Plan; comments by 12-21-81
PANAMA CANAL COMMISSION
- 57915 11-27-81 / Shipping and navigation ruled for the Panama Canal; comments by 12-20-81
SECURITIES AND EXCHANGE COMMISSION
- 52378 10-27-81 / Automatic Effectiveness of Registration Statements Filed Under the Securities Act of 1933 by Certain Unit Investment Trusts; comments by 12-21-81
- 56426 11-17-81 / Inspection of newly registered brokers and dealers by self-regulatory organizations; comments by 12-21-81
TRANSPORTATION DEPARTMENT
Coast Guard—
- 55278 11-9-81 / Removal of regulations for load line survey fees; comments by 12-24-81
Federal Aviation Administration—
- 51866 10-22-81 / Air traffic operating and flight rules; nontransponder operations in certain controlled airspace; reduction in required advance notice; comments by 12-21-81
TREASURY DEPARTMENT
Internal Revenue Service—
- 51588 10-20-81 / Exclusion of interest on certain savings certificates; comments by 12-21-81
VETERANS ADMINISTRATION
- 57571 11-24-81 / Veterans benefits; former prisoners of war; comments by 12-23-81
- 50509 10-14-81 / Increase in fees for Federal meat grading and certification services; comments by 12-31-81
Food and Nutrition Service—
- 35629 7-10-81 / National School Lunch Program and State Administrative Expense Fund; Assessment, Improvement and Monitoring System (AIMS); comments by 12-31-81
- 60592 12-11-81 / Summer Food Service Program; limitation of sponsor and geographic area eligibility; comments by 12-31-81
Soil Conservation Service—
- 52119 10-26-81 / Support activities; compliance with NEPA; comments by 12-28-81
CIVIL AERONAUTICS BOARD
- 52585 10-27-81 / Aircraft accident liability insurance; Canadian Charter Air Taxi Operators; classification and exemption of air taxi operators; comments by 12-28-81
- 53195 10-28-81 / Removal of "comments air carrier" classification form cargo and mail carriers; comments by 12-28-81
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—
- 55732 11-12-81 / Foreign Fishing; reports and record keeping; comments by 12-28-81
EDUCATION DEPARTMENT
- 53716 10-30-81 / Post employment conflicts of interest; comments by 12-29-81
ENERGY DEPARTMENT
Economic Regulatory Administration—
- 58052 11-27-81 / Powerplant and industrial fuel use; comments by 12-28-81
ENVIRONMENTAL PROTECTION AGENCY
- 56464 11-17-81 / Connecticut application for interim authorization, Phase 1, Hazardous Waste Management Program; comments by 12-30-81
- 53704 10-30-81 / Fluoroalkenes; response to Interagency Testing Committee; comments by 12-29-81
FEDERAL COMMUNICATIONS COMMISSION
- 60022 12-8-81 / Amendment to allow the selection from among mutually exclusive competing applications using random selection or lotteries instead of comparative hearings; reply comments by 12-30-81
[See also 46 FR 58110, 11-30-81]
- 56473 11-17-81 / Calculation of necessary bandwidth for frequency modulation microwave radio relay systems; comments by 12-29-81
- 60222 12-8-81 / Experimental, auxiliary, and special broadcast and other program distributional services; current policy and procedures; comments by 1-2-82
- 50990 10-16-81 / FM broadcast station in Pittsburg, Kansas; changes in table of assignments; reply comments by 12-28-81
- 50989 10-16-81 / FM broadcast station in Williams, Ariz.; changes in table of assignments; reply comments by 12-28-81
- 55279 11-9-81 / Formulation of policies relating to broadcast renewal applicant; comments by 12-28-81
- 60031 12-18-81 / Specialized mobile radio system; revision of contour measurement; comments by 12-30-81
- 50988 10-16-81 / TV broadcast station in Cape Coral, Fla.; changes in table of assignments; reply comments by 12-28-81

Deadlines for Comments on Proposed Rules for the Week of December 27, 1981 through January 2, 1982

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

- 54919 11-5-81 / Increase in fees for Federal livestock grading and certification services; comments by 12-31-81

- 56831 11-19-81 / TV broadcast station; changes in table of assignments; Greenwood, S.C.; comments by 12-31-81

FEDERAL RESERVE SYSTEM

- 54565 11-3-81 / Bank holding companies (Regulation Y); Nonbanking activities; application by Bank America Corp. to provide management consulting services to nonbank depository institutions; comments by 12-30-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

- 58297 12-1-81 / Food additives permitted for direct addition to food for human consumption; zinc methionine sulfate tablets; objections by 12-31-81

Health Care Financing Administration—

- 48524 10-1-81 / Medicaid program; freedom of choice; waivers of and exceptions to State plan requirements; comments by 12-30-81

- 48532 10-1-81 / Medicaid program; home and community-based services; comments by 12-30-81

- 48556 10-1-81 / Medicaid program; miscellaneous medicaid provisions—increased State flexibility; comments by 12-30-81

- 48550 10-1-81 / Medicare and Medicaid program; less than effective drugs and inpatient hospital tests; comments by 12-30-81

Public Health Service—

- 52566 10-27-81 / Qualifications of Health Maintenance Organizations; comments by 12-28-81

Social Security Administration—

- 53720 10-30-81 / Proration of shelter, utilities, and similar need items for AFDC children living with ineligible relatives; comments by 12-29-81

- 53449 10-29-81 / Supplemental security income benefits; eligibility, amount of benefits, reports required, income, resources, and State supplementation provisions, agreements, and payments; comments by 12-28-81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

- 57838 11-25-81 / Schedule A—Fair market rents for new construction and substantial rehabilitation; all market areas; comments by 12-28-81

INTERIOR DEPARTMENT

Land Management Bureau—

- 58264 11-30-81 / Outer Continental Shelf minerals and rights-of-way management, general; amendment to streamline and clarify existing provisions; comments by 12-28-81

Reclamation Bureau—

- 37528 7-21-81 / Acreage limitation; reclamation rules and regulations; comments by 12-31-81

- 37529 7-21-81 / Acreage limitation; resumption of comment period on draft environmental impact statement; comments by 12-31-81

Surface Mining Reclamation and Enforcement Office—

- 57697 11-25-81 / Modified portions of the permanent regulatory program; Maryland; comments by 12-28-81

JUSTICE DEPARTMENT

Drug Enforcement Administration—

- 53405 10-29-81 / Exempt chemical preparations; comments by 12-28-81

PANAMA CANAL COMMISSION

- 60216 12-9-81 / Access to information concerning individuals; proposed exemption from access of system of records under the Privacy Act; comments by 12-29-81

POSTAL SERVICE

- 58097 11-30-81 / National Environmental Policy Act (NEPA); amendment of categorical exclusions; comments by 12-30-81

SECURITIES AND EXCHANGE COMMISSION

- 53679 10-30-81 / Regulatory flexibility agenda; comments by 12-31-81

TRANSPORTATION DEPARTMENT

Coast Guard—

- 45631 9-14-81 / Maneuvering performance standards for U.S. flag vessels; comments by 1-12-82

Federal Aviation Administration—

- 8316 1-26-81 / Development and submission of airport operator's noise compatibility planning programs and the FAA's administrative process for evaluating and determining the effects of those programs; comments by 12-31-81

TREASURY DEPARTMENT

Internal Revenue Service—

- 52391 10-27-81 / Income tax withholding; increase; comments by 12-28-81

VETERANS ADMINISTRATION

- 58095 11-30-81 / Privacy Act of 1974; access to records; comments by 12-28-81

Next Week's Meetings

DEFENSE DEPARTMENT

Office of the Secretary—

- 51798 10-22-81 / Wage Committee, Washington, D.C. (closed), 12-22-81

EDUCATION DEPARTMENT

- 58144 11-30-81 / Education Statistics Advisory Council, Washington, D.C. (open), 12-21 and 12-22-81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Environment and Energy Office—

- 57950 11-27-81 / Millender Center Project, Environmental Impact Statement, Detroit, Mich. (open), 12-21-81

VETERANS ADMINISTRATION

- 46463 9-18-81 / Wage Committee, Wash., D.C. (closed), 12-22-81

Next Week's Public Hearings

CIVIL AERONAUTICS BOARD

- 60043 12-8-81 / Visit USA fare/export inland contract rate investigation, Washington, D.C., 12-23-81

ENVIRONMENTAL PROTECTION AGENCY

- 55997 11-13-81 / Texas application for interim authorization, Phase II, Components A and B, hazardous waste management program, Austin, Tex., 12-21-81

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing December 8, 1981

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the Federal Register during the previous week.

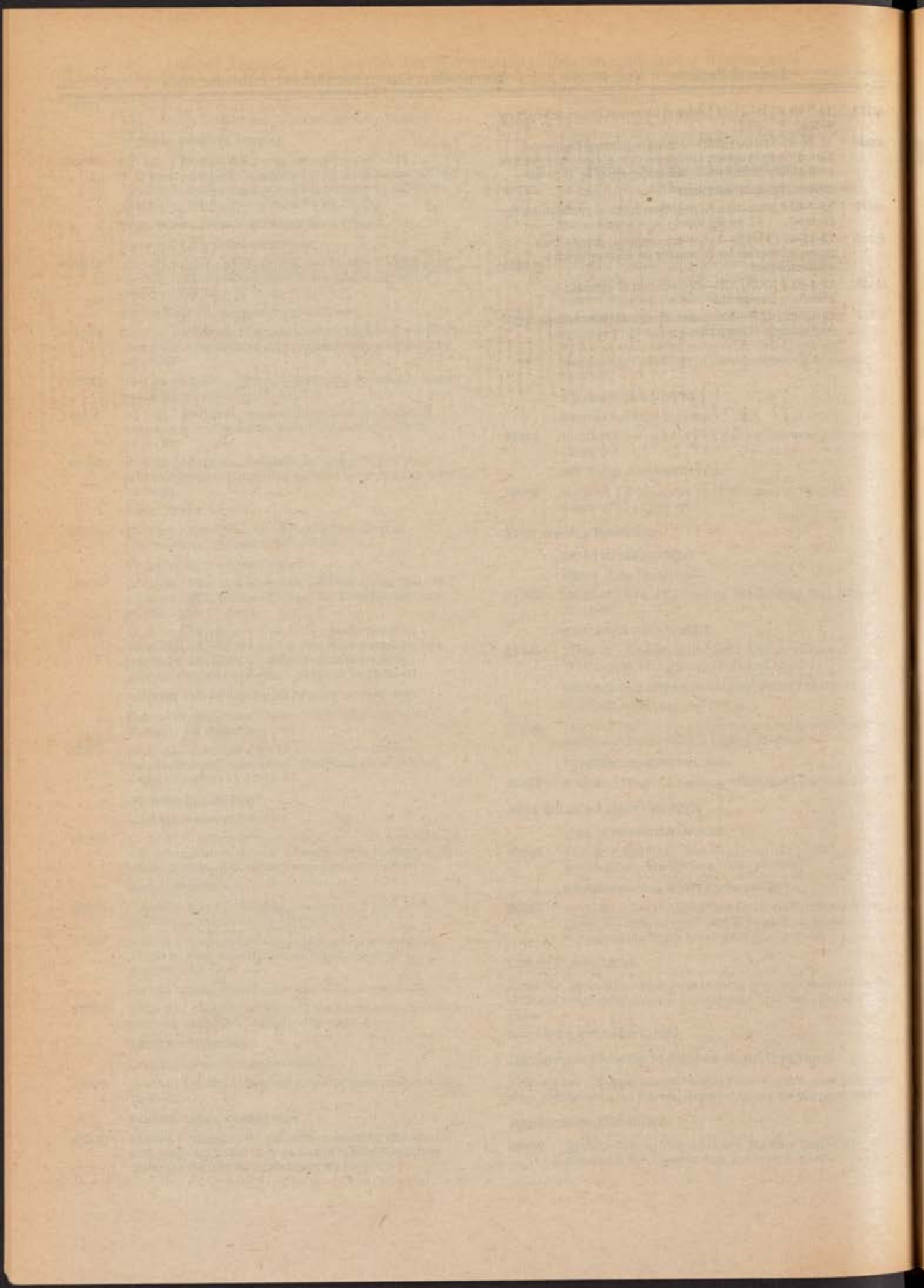
Applications Deadlines

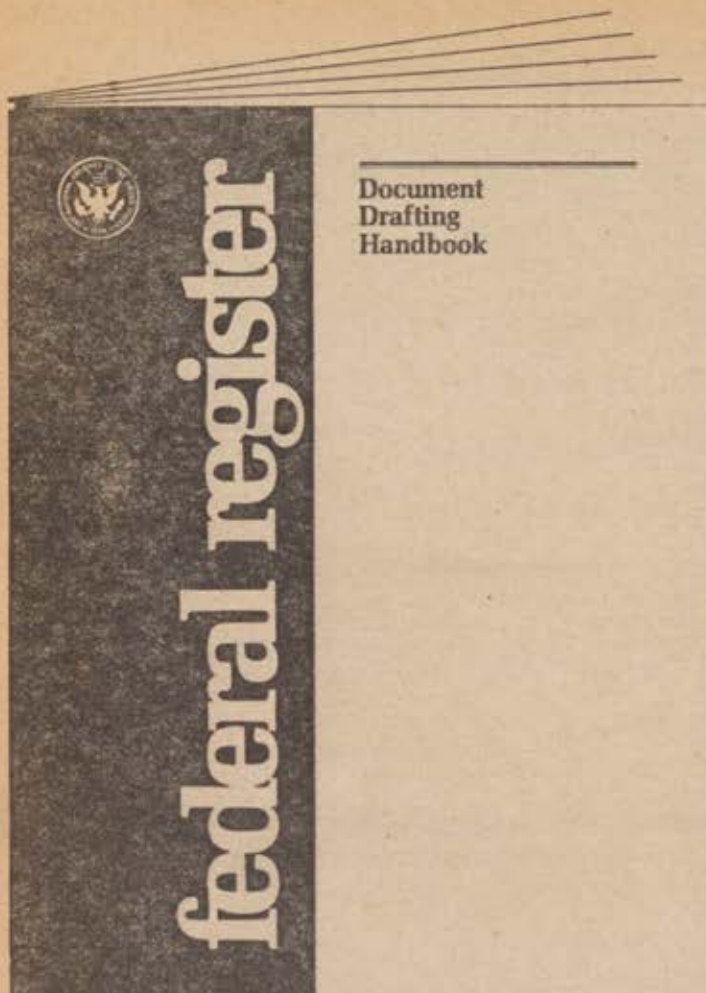
- 59572 12-7-81 / ED—Comprehensive Program Final Year Dissemination Competition; apply by 1-12-82

- 59573 12-7-81 / ED—Field Initiated Research Program; apply by 4-1-82
- 60504 12-10-81 / HHS/HDSO—Multidisciplinary Centers of Gerontology Program; Long term care gerontology centers; availability of financial assistance; apply by 2-26-82

OTHER ITEMS OF INTEREST

- 59570 12-7-81 / Education Appeal Board; list of applications for review
- 60645 12-11-81 / FMCS—Labor-management cooperation program; request for comments on draft program announcement
- 60009 12-8-81 / IDCA/AID—Registration of agencies for voluntary foreign aid
- 60537 12-10-81 / NSF—Statement of organization; information for guidance of the public





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